

1998 Legislative Review

by Al O'Connor

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Introduction

After much ballyhoo about the supposedly open negotiation of the budget by rank-and-file legislators, the 1998 regular session of the New York State Legislature ground to a halt in April when Governor Pataki unexpectedly vetoed \$760 million in appropriations, most notably in the area of human services. Included in the extensive list of the Governor's vetoes was the elimination of state funding for Prisoners' Legal Services and the Neighborhood Defender Service of Harlem, as well as reduced funding for civil legal services for poor people.

The legislative centerpiece of the session was the elimination of parole for first-time violent offenders, the so-called "Jenna's Law," named after Albany murder victim, Jenna Grieshaber. Separate versions of the bill passed in the Senate and Assembly, with the Assembly Democrats opting for a comprehensive approach that linked elimination of parole for first-time violent felony offenders with some modest reform of the Rockefeller Drug Laws. But the Senate refused to consider any amelioration of the drug laws, and the regular session ended without fanfare—and without a "Jenna's Law"—on June 19th. Unfortunately, Speaker Sheldon Silver later reconvened the Assembly in a one-day special session to pass the Senate version of "Jenna's Law," a move that Silver claimed was necessary in order to "remove this issue as a means of inflammatory political attack in the upcoming election." The Assembly passed the bill on July 29th by a vote of 128–20. Signed into law by Governor Pataki on August 6th, "Jenna's Law" goes into effect on September 1, 1998.

With the obvious exception of "Jenna's Law," which will have a profound effect on the practice of criminal law in New York, no criminal justice bills of any major significance passed the Legislature in 1998. Summarized below are the bills affecting public defense work that have been signed

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into law or are expected to be delivered to Governor Pataki for his approval or veto. The complete text of all chapter laws can be found in McKinney's Session Law News. Bill text and sponsor memos can also be obtained from the State Senate [www.senate.state.ny.us], the Assembly [www.assembly.state.ny.us], from individual legislators, and from the Backup Center.

Penal Law

Chapter 1 (S.7820) (Eliminates discretionary parole release and greatly increases sentences for first-time violent felony offenders; requires inmates to serve a period of post-release supervision following release from a determinate sentence). Effective: September 1, 1998.

"Jenna's Law" establishes a system of determinate sentencing for first-offenders convicted of "violent" felonies defined in Penal Law §70.02. It also requires first-violent felony offenders and predicate violent felony offenders to serve an additional post-release supervision sentence of up to five years upon release from prison. For crimes committed on or after September 1, 1998, first-offenders will be subject to the following determinate terms of imprisonment, which must be imposed in whole or in half-year increments:

Determinate Sentence Range—First Violent Felony Offenders

Class of Felony Between

Class B violent 5–25 years

Class C violent 3½–15 years

Class D violent 2–7 years (DOCS commitment not mandatory in all cases)

Class E violent 1½–4 years (DOCS commitment not mandatory in all cases)

The existing statutory exceptions to a mandatory state prison sentence for certain Class D and E violent felonies have been retained in the new law [See Penal Law §§60.05 (5); 70.00 (4); 70.02 (2); 70.02 (5)]. Defendants convicted of such D and E violent felonies may seek to avoid a determinate sentence on the same terms as they might previously have sought an exemption from indeterminate sentencing. However, where a sentence of imprisonment is imposed which requires a commitment to the state Department of Correctional Services, it must be consistent with the above determinate sentence range for Class D and E felonies.

Domestic Violence Exception to Determinate Sentencing

The law also provides that, in lieu of a determinate sentence, a court may impose an indeterminate one when the defendant was a victim of domestic violence. To be eligible, a defendant must demonstrate three factors at a hearing:

- a) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim; and

- b) such abuse was a factor in causing the defendant to commit such offense; and
- c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined CPL §530.11 (1).

However, even if the court finds for the defendant on all three factors, it must impose an indeterminate sentence within the range authorized by 1995's Sentencing Reform Act for first violent felony offenses, i.e. the minimum must be one-half the maximum:

	<u>Minimum Sentence</u>	<u>Maximum Sentence</u>
Class B	3–6 years	12½ to 25 years
Class C	2¼ to 4½ years	7½ to 15 years
Class D	1½ to 3 years	3½ to 7 years
Class E	1½ to 3 years	2 to 4 years

Therefore, the domestic violence exception does not offer much in the way of a sentence reduction. In fact, defendants convicted of lower level D and E violent felonies would be better off initially pursuing standard Penal Law exceptions to a state prison sentence, rather than the mandatory imprisonment called for by the domestic violence exception in “Jenna’s Law.” It should be noted that the domestic violence exception is further limited by the restrictive definition of a “family or household” member in CPL section 530.11, which does not include unmarried persons, unless they have a child in common or were previously married and are now divorced.

Post-Release Supervision Sentence

The sentence calculation rules for determinate sentences under “Jenna’s Law” are governed, in part, by the rules enacted in 1995 as part of the Sentencing Reform Act. Inmates serving determinate terms of imprisonment may receive good time allowances up to 1/7 of the term imposed by the court [Correction Law section 803 (1-c)]. Once an inmate successfully completes 6/7 of the determinate sentence, that inmate will be conditionally released to parole supervision to complete service of the sentence imposed by the court. However, at this point, “Jenna’s Law” differs from the Sentencing Reform Act because, upon release, the inmate must first serve a period of “post-release supervision” of up to 5 years, during which time the remaining 1/7 period of the determinate sentence is held in abeyance. Upon successful completion of the post-release supervision sentence, the remaining 1/7 portion of the penal sentence is to be “*credited with and diminished by*” the time served on post-release supervision. Therefore, as the remaining 1/7 of a determinate sentence will almost invariably be less than the period of post-release supervision, the successful completion of post-release supervision will mark the expiration of the entire sentence.

The following periods of post-release supervision must be imposed when a defendant is convicted of a violent felony offense and sentenced to a determinate term of imprisonment:

- Class B or C violent (first-felony offender)
—between 2½ to 5 years
- Class D or E violent (first felony offender)
—between 1½ to 3 years
- Any Class violent felony (predicate felony of-fender)
—5 years

Post-release supervision under “Jenna’s Law” is the functional equivalent of parole supervision. The Board of Parole shall “establish and impose conditions of post-release supervision in the same manner and to the same extent as it may establish and impose conditions . . . upon persons who are granted parole or conditional release” [Penal Law §70.45 (3)]. However, unlike ordinary parole or conditional release, the Board may require that an inmate released from DOCS custody on post-release supervision immediately serve up to six months in a residential treatment facility.¹

In most respects, standard parole violation rules will govern violations of post-release supervision.² However, in lieu of the Board of Parole’s time assessment guidelines, “Jenna’s Law” calls for a six-month minimum time assessment for violations of post-release supervision. The six-month minimum time assessment will apply even when the violator owes less than six months on the post-release supervision sentence. The time assessment will not begin to run until after the final hearing, so time spent in custody prior to the hearing will not be credited. Time spent in custody under a time assessment will first be charged to the unexpired portion of the underlying penal sentence, and thereafter to the unexpired portion of the post-release supervision sentence. Violators may be reincarcerated for up to the balance of the remaining period of post-release supervision (5 years

¹ Note that a six-month residential treatment placement would subject some inmates serving relatively short determinate sentences under “Jenna’s Law” to a period of confinement greater than the determinate term imposed by the court. For example, an inmate sentenced to a determinate term of three years (36 months) would be eligible for approximately five months good time. But release from DOCS custody at 31 months, and immediate commitment to a residential facility for six months, would amount to total confinement for 37 months.

² “An alleged violation of any condition of post-release supervision shall be initiated, heard, and determined in accordance with the provisions of subdivision three and four of section [259-I] of the Executive Law” [Penal Law §70.45 (4)].

³ “When a person is subject to two or more periods of post-release supervision, such periods shall merge with and be satisfied by discharge of the period of post-release supervision having the longest unexpired term to run; provided, however, any time served upon one period of post-release supervision shall not be credited to any other period of post-release supervision except as provided [in Penal Law §70.30 (5)]” (i.e. time served under a vacated sentence). Penal Law §70.45 (5-c).

in some cases) *plus*, where applicable, the remaining unserved portion of the penal sentence.

Defendants who are subject to multiple periods of post-release supervision must satisfy the period which has the longest unexpired term to run. In other words, consecutive terms of post-release supervision cannot be imposed.³

To further complicate matters, defendants sentenced under “Jenna’s Law” will sometimes be subject to indeterminate sentences arising out of the original sentencing proceeding, or as a result of new felonies committed while serving a post-release supervision sentence. In general, defendants who are subject to post-release supervision, and a period of parole or conditional release from an indeterminate sentence, must serve the longest unexpired term. When the longest unexpired term is time owed to parole or conditional release from an indeterminate sentence, the defendant will be subject to rules governing post-release supervision for a period of time equal to the unexpired period of post-release supervision, and will thereafter serve out the remaining time on parole supervision. [Note: A detailed article on sentence calculation rules under “Jenna’s Law” will appear in a forthcoming issue of the Report.]

Finally, “Jenna’s Law” prohibits the Board of Parole from granting early discharges from parole to defendants serving a post-release supervision sentence or a life sentence (except a life sentence for a drug offense). It also requires the Department of Correctional Services to notify violent crime victims whenever the inmate convicted of the underlying offense absconds or escapes from custody, or is otherwise lawfully released to supervision.

Chapter 289 (S.2402-a) (Sale of controlled substance on or near day care centers and educational facilities). Effective: September 1, 1998.

Amends Penal Law Article 220 to extend crimes relating to the sale of a controlled substance on or near school grounds to cover *day care centers and other educational facilities (e.g. nursery and pre-kindergarten schools)* when the sale takes place “under circumstances evincing knowledge by the defendant that [the] sale is taking place” in such an area. The law applies to areas accessible to the public within 1000 feet of such facilities, including “sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants, or to “any parked automobile or other parked vehicle” within 1000 feet of any such facility. A rebuttable presumption is established that a person has knowledge that he or she is within a designated area of a child day care or educational facility “when notice is conspicuously posted of the presence or proximity of such facility.”

Chapter 378 (A.10920) (Criminal Possession of a Weapon — Disguised Guns). Effective: November 1, 1998.

Enacts provisions relating to the new offense of criminal possession of a disguised gun, which is defined under Penal Law §265 (20) as “**any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.**”

The legislation:

- adds possession of a disguised gun to the elements of criminal possession of a weapon in the third degree (Penal Law §265.02) (Class D felony)
- amends Penal Law §265.03 to include possession of a disguised gun with intent to use it unlawfully against another as among the acts constituting criminal possession of a weapon in the second degree (Class C felony)
- amends Penal Law §70.02 to define the above offenses as violent felonies
- adds disguised guns to provisions relating to the manufacture, transport, disposition and defacement of weapons under Penal Law §265.10

Chapter 435 (S.6243) (Juvenile Offender prosecution—Criminal Possession of a firearm on school grounds—Penal Law §265.03). Effective: November 1, 1998.

Amends the Criminal Procedure Law, Penal Law and Family Court Act to allow prosecution of 14 and 15 year olds as juvenile offenders for the crimes of criminal possession of a weapon in the second and third degree (Penal Law §265.03, 265.04) when the firearm is possessed on “school grounds,” as that term is defined in Penal Law §220 (14).

Chapter ___ (A.6246) (Criminal sale of a firearm—offense level upgrades). Effective: November 1, 1998.

This legislation enacts one level upgrades for crimes relating to the criminal sale of a firearm:

- Criminal sale of a firearm in the third degree: now a Class D felony (Penal Law §265.11)
- Criminal sale of a firearm in the second degree: now a Class C felony (Penal Law §265.12)
- Criminal sale of a firearm in the first degree: now a Class B felony (Penal Law §265.13)
- Criminal sale of a firearm with the aid of a minor: now a Class C felony (Penal Law §265.14)
- Criminal sale of a firearm to a minor: now a Class C felony (Penal Law §265.16)

Chapter ___ (A.11258) (Endangering the welfare of a vulnerable elderly person). Effective: November 1, 1998.

Establishes new crimes involving endangering the welfare of a vulnerable elderly person, and endangering the welfare of a physically disabled person.

- Penal Law §260.32—Endangering the welfare of a vulnerable elderly person in the second degree.

A person is guilty of endangering the welfare of a vulnerable elderly person in the second degree when, being a caregiver for a vulnerable elderly person:

1. *With intent to cause physical injury to such person, he or she causes such injury to such person; or*
2. *He or she recklessly causes physical injury to such person; or*

3. *With criminal negligence, he or she causes physical injury to such person by means of a deadly weapon or a dangerous instrument; or*
4. *He or she subjects such person to sexual contact without the latter's consent. Lack of consent under this subdivision results from forcible compulsion or incapacity to consent, as those terms are defined in article one hundred thirty of this chapter, or any other circumstances in which the vulnerable elderly person does not expressly or impliedly acquiesce in the caregiver's conduct. In any prosecution under this subdivision in which the victim's lack of consent results solely from incapacity to consent because of the victim's mental defect or mental incapacity, the provisions of section 130.16 of the chapter shall apply. In addition, in any prosecution under this subdivision in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.*

(Class E felony)

- Penal Law §260.34—Endangering the welfare of a vulnerable elderly person in the first degree:

A person is guilty of endangering the welfare of a vulnerable elderly person in the first degree when, being a caregiver for a vulnerable elderly person:

1. *With intent to cause physical injury to such person, he or she causes serious physical injury to such person; or*
2. *He or she recklessly causes serious physical injury to such person.*

(Class D felony)

- Penal Law §260.30—Vulnerable Elderly Persons; Definitions.

1. *“Caregiver” means a person who (i) assumes responsibility for the care of a vulnerable elderly person pursuant to a court order; or (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person.*
2. *“Sexual contact” means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.*
3. *“Vulnerable elderly person” means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and mani-*

fested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

The legislation also amends Penal Law 260.25, which was previously limited to protection of incompetent persons, to include endangerment of physically disabled persons.

- Penal Law §260.25—Endangering the welfare of an incompetent or **physically disabled** person.

*A person is guilty of endangering the welfare of an incompetent or **physically disabled** person when he knowingly acts in a manner likely to be injurious to the physical, mental, or moral welfare or a person who is unable to care for himself or herself because of **physical disability**, mental disease or defect.*

(Class A misdemeanor)

Chapter ___ (S.6781-c) (Misrepresentation by a child day care provider—Reckless assault of a child by a day care provider). Effective: November 1, 1998.

Establishes two new offenses: Misrepresentation by a child day care provider (Penal Law §260.30) and Reckless assault of a child by a child day care provider (Penal Law §120.01).

- Penal Law §260.30—Misrepresentation by a child day care provider

A person is guilty of misrepresentation by a child day care provider when, being a child day care provider or holding himself or herself out as such, he or she makes any willful and intentional misrepresentation, by act or omission, to a parent or guardian of a child in the care of such provider (or a child whose prospective placement in such care is being considered by such parent or guardian) to any state or local official having jurisdiction over child day care providers, or to any police officer or peace officer as to the facts pertaining to such child day care provider, including, but not limited to: (i) the number of children in the facility or home where such number is in violation of the provisions of section three hundred ninety of the social services law, (ii) the area of the facility, home, or center used for child day care, or (iii) the credentials or qualifications of any child day care provider, assistant, employee, or volunteer. A misrepresentation subject to the provisions of this section must substantially place at risk the health or safety of a child in the care of a child day care provider.

(Class A misdemeanor)

- Penal Law §120.01—Reckless assault of a child by a day care provider

A person is guilty of reckless assault of a child when, being a child day care provider [as defined in Social Services Law §390] or an employee thereof, he or she recklessly causes

serious physical injury to a child under the care of such provider or employee who is less than eleven years of age.

(Class E felony)

Chapter 287 (S.1143-a) (Assault in the second degree—hospital emergency room workers). Effective: November 1, 1998.

Adds medical workers in hospital emergency rooms to the list of persons covered by the strict liability assault offense defined in Penal Law §120.05 (3).

Chapter 269 (A.9252-a) (Assault and obstructing governmental administration by releasing or failing to control an animal). Effective: November 1, 1998.

Includes certain acts involving the release or failure to control an animal in the elements of assault in the second degree and obstructing governmental administration:

- Penal Law §120.05 (3)—Assault in the second degree

A person is guilty of assault in the second degree when:

With intent to prevent a peace officer, police officer, a fireman, including a fireman acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such fireman, or an emergency medical service paramedic or emergency medical service technician, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, fireman, paramedic or technician, he causes physical injury to such peace officer, police officer, fireman, paramedic or technician.

- Penal Law §195.05—Obstructing governmental administration in the second degree

A person is guilty of obstructing governmental administration in the second degree when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Minor Penal Law Amendments

Chapter 99 (A.9788-a) (Offering a False Instrument for Filing—Public Authorities & Public Benefit Corporations). Effective: November 1, 1998.

Amends Penal Law §175.35 to include intent to defraud a public authority or public benefit corporation within the elements of offering a false instrument for filing in the first degree (Class E felony).

Chapter 369 (A.8174) (Enterprise Corruption—Penal Law § 460.10). Effective: November 1, 1998.

Adds criminal sale of a firearm with the aid of a minor (Penal Law §265.14) and criminal sale of a firearm to a minor (Penal Law §265.16) to the list of offenses that can support an enterprise corruption prosecution.

Chapter 346 (S.7566) (Possession of Gambling Device—Slot machines—Affirmative defense). Effective: November 1, 1998.

Amends Penal Law §225.32 to provide an affirmative defense to possession of a gambling device (Penal Law §225.30) when a slot machine is possessed for product development, research, or manufacturing purposes.

Criminal Procedure Law

Chapter 159 (S.3781) (Interim Probation Supervision). Effective: October 5, 1998.

This legislation increases a court's authority, first established by the Legislature in 1994, to place a defendant on interim probation between the date of conviction and sentence. The 1994 legislation (CPL §400.10) did not authorize courts to order defendants to report to probation officers while on interim probation, and did not expressly authorize an extended period of supervision between the date of conviction and sentence. Limited to probation-eligible cases only, Chapter 159 requires defendants to report to a probation officer while on interim probation, and to adhere to other conditions of supervision. It also authorizes courts to adjourn sentencing for up to one year when placing the defendant on interim supervision.

- CPL §390.30 (6) Interim probation supervision

In any case where the court determines that a defendant is eligible for a sentence of probation, the court, after consultation with the prosecutor and upon the consent of the defendant, may adjourn the sentencing to a specified date and order that the defendant be placed on interim probation supervision. In no event may the sentencing be adjourned for a period exceeding one year from the date the conviction is entered. When ordering that the defendant be placed on interim probation supervision, the court shall impose all of the conditions relating to supervision specified in subdivision three of section 65.10 of the penal law and may impose any or all of the conditions relating to conduct and rehabilitation specified in subdivision two of section 65.10 of such law; provided, however, that the defendant must receive a written copy of any such conditions at the time he or she is placed on interim probation supervision. The defendant's record of compliance with such conditions, as well as any other relevant information, shall be included in the presentence report, or updated presentence report, prepared pursuant to this section, and

the court must consider such record and information when pronouncing sentence.

Chapter 367 (A.5982-a) (Parole Release Consideration—Victim Impact Statements). Effective: July 14, 1998.

Amends CPL §440.50 (1) to clarify that a crime victim's right to submit a written victim impact statement to the Parole Board, or to meet personally with a Board member to make such a statement, applies *each time* an inmate is eligible for parole release consideration.

Chapter ___ (S.6860-a) (Parole Release Consideration—Audiotaped or videotaped victim impact statements). Effective: upon Governor's signature.

Amends CPL §440.50 to authorize submission of an audiotaped or videotaped victim impact statement to the Parole Board.

Chapter ___ (S.6785) (Order of Protection in favor of a witness in criminal actions). Effective: upon Governor's signature.

Amends CPL §530.12 (5) to authorize a court to issue an order of protection in favor of a witness in a criminal action involving a family offense, and CPL §530.13 (4)(a) to issue a stay-away order in favor of a witness in non-family offense matters.

Chapter 360 (A.1829-a) (Grand Jury—Evidence—Faxed copy of sworn statement). Effective: November 1, 1998.

Amends CPL §190.30 (2-a) to permit introduction in the grand jury of a fax copy of a statement of a crime victim, provided the sworn statement is otherwise admissible pursuant to CPL §190.30 (3).

Minor Criminal Procedure Law Amendments

Chapter ___ (S.6704-a) (Audio-Visual Court Appearances—Albany and Richmond Counties—Sunset Extended). Effective: upon Governor's signature / sunset extended to December 31, 2001.

Amends CPL §182.20 to add Albany and Richmond counties to the list of jurisdictions authorized to participate in the experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television. Extends the sunset clause of the experiment to December 31, 2001.

Chapter 430 (S.5976) (Audio-Visual Court Appearances—Onondoga County). Effective: July 22, 1998.

Amends CPL §182.20 to add Onondoga County to the list of jurisdictions authorized to participate in the experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television.

Chapter 177 (S.6173) (Audio-Visual Court Appearances—Cattaraugus County). Effective: July 7, 1998.

Amends CPL §182.20 to add Cattaraugus County to the list of jurisdictions authorized to participate in the experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television.

Chapter 427 (S.5497) (Bail forfeiture—extension of filing period). Effective: October 20, 1998.

Amends CPL §540.10 to extend from 60 to 120 days the period in which a district attorney must file to secure a judgment against a bail bond agency when bail is forfeited.

Chapter ___ (S.6174-b) (Rockland County Drug Court—Transfer of actions). Effective: upon Governor's signature.

Authorizes criminal courts in Rockland County to transfer misdemeanor and pre-indictment felony actions to the Drug Court operated by the Clarkstown Justice Court.

Chapter 424 (S.4595-a) (Police officer status—State university security officers). Effective: January 1, 1999.

The legislation grants police officer status to state university security officers, who heretofore have been designated peace officers.

Family Law Practice

Chapter 150 (S.5799-b) (Order of visitation or custody prohibited in favor of a person convicted of murder of parent, custodian, or guardian of child). Effective: July 7, 1998.

Prohibits a court from ordering visitation or custody to a person who has been convicted of the murder of a parent, legal custodian, or legal guardian of the child who is the subject of the proceeding. The legislation includes an exception when a child of suitable age signifies assent to such visitation or custody, or, when the child is too young to do so, the child's custodian or legal guardian consents thereto. It also includes an exception when a) the convicted person, or a family household member of either party, was a victim of domestic violence; and b) the domestic violence was causally related to the commission of the murder; and c) the court otherwise determines that visitation or custody is in the best interest of the child.

Chapter 423 (S.4413) (Surrogate's Court Procedure Act—Guardianship proceedings—State-wide central child abuse registry). Effective: July 22, 1998.

Amends §§1704 and 1707 of the Surrogate's Court Procedure Act to require parties to disclose in a guardianship petition whether any person 18 years or older who resides in the home of the proposed guardian is the subject of an indicated report in the state-wide central register of child abuse. The court must also consider such information in its determination.

Chapter 393 (A.105-b) (Family Court—Order of Support—Life and Accident insurance). Effective: July 22, 1998.

Amends Family Court Act §416 to include among the authorized requirements of an order of support that a party purchase, maintain or assign a life or accident insurance policy for the benefit of the person on whose behalf the petition is brought.

Chapter 186 (S.6419) (Family Court orders—Filing requirements). Effective: July 7, 1998.

Eliminates requirement that certain orders issued by the Family Court be additionally filed in the County Clerk's office. The original of all orders can now be filed in the Family Court alone [Family Court Act §217 (2)].

Chapter ___ (S.7589-a) (Out-of state orders of protection—Full faith and credit). Effective: 90 days after Governor's signature.

Series of technical amendments to the Domestic Relations Law, Family Court Act, Criminal Procedure Law, Penal Law and Executive Law designed to promote full faith and credit enforcement of out-of-state orders of protection in domestic violence cases.

Judiciary Law

Chapter 519 (A.9993) (Judiciary Law—Respite period after prolonged jury duty). Effective: August 1, 1998 and applies to jury service performed before or after such date.

Amends Judiciary Law §524 to double the four-year statutory post-jury duty disqualification period for grand and petit jurors who have served more than ten days. The new statutory disqualification period for such jurors will be eight years. In a few counties (currently New York and Bronx), the statutory disqualification period is two years, resulting in a new disqualification period of four years.

Chapter 520 (A.9994) (Judiciary Law—Qualification of grand and petit jurors). Effective: July 29, 1998.

Technical amendment that repeals Judiciary Law §514, which redundantly addresses the qualification and selection process for grand jurors. The stated purpose of the legislation is to clarify that, except where expressly stated otherwise, the general juror qualification and selection provisions otherwise included in Judiciary Law Article 16 apply to grand and petit jurors alike.

Alcohol-Related Offenses

Chapter 383 (A.11286) (Alcoholic Beverage Control Law—Purchase through fraudulent means—increased fines). Effective: January 1, 1999.

Amends Alcoholic Beverage Control Law §65-b to increase fines for second and subsequent offenses involving the purchase or attempted purchase of an alcoholic beverage by a person under age 21 through fraudulent means (a violation). The legislation also: (a) increases a judge's power to suspend the license, or to suspend the privilege of an unlicensed person to obtain a license, upon conviction; and b) authorizes courts to order offenders to (i) attend an alcohol awareness program and/or (ii) undergo mandatory alcoholic abuse evaluation by an agency licensed by the Office of Alcoholism and Substance Abuse Services.

Chapter ___ (S.6444-b) (Parks, Recreation and Historic Preservation Law—Snowmobiling while intoxicated). Effective: November 1, 1999.

Enacts new comprehensive provisions relating to snowmobiling while impaired, intoxicated, or impaired by drugs. The legislation closely tracks the law applicable to motor vehicles.

Chapter 391 (S.2640-b) (Zero Tolerance—Operating a boat after having consumed alcohol by a person under age 21). Effective: April 1, 1999.

Amends §49-b of the Navigation Law to enact a “zero tolerance” law with respect to boat operators under age 21. Similar in almost every respect to 1996’s zero tolerance legislation for motor vehicle operators, the legislation prohibits persons under age 21 from operating a vessel after having

“consumed alcohol,” a standard met by a blood alcohol level between .02% and .07% (Non-criminal offense).

Chapter 153 (S.2621-a) (Vehicle and Traffic Law—Possession of an open container of an alcoholic beverage with intent to consume). Effective: November 4, 1998.

Vehicle and Traffic Law §1227 (1) prohibits the consumption of alcoholic beverages in motor vehicles. Chapter 153 amends the section to additionally prohibit the possession of an open container of an alcoholic beverage in a vehicle with the intent to consume it (traffic infraction). An exception is provided for certain chauffeur-driven vehicles.

Crime Victim’s Board

Chapter 64 (S.5183) (Crime Victim’s Board—Confidentiality of records). Effective: May 21, 1998.

With some limited exceptions, Chapter 64 provides for the confidentiality of records maintained by the Crime Victim’s Board. The stated purpose of the bill is to facilitate easier denial of FOIL requests by persons convicted of the underlying criminal offense (Executive Law §633).

Chapter 443 (S.6503) (Crime Victims’ Awards—Stalking offenses). Effective: July 22, 1998.

Increases the availability of crime victims’ awards for victims of stalking offenses (menacing, harassment, aggravated harassment, criminal contempt) [Executive Law §631 (12)].

Chapter 81 (S.6606) (Crime Victims’ Awards—Crime scene clean-up). Effective: June 2, 1998.

Authorizes the Crime Victim’s Board to award up to \$2,500 for crime scene clean-up expenses.

Miscellaneous

Chapter 156 (S.3504) (Civil Practice Law and Rules—Privileged Communications—Faxes). Effective: July 7, 1998.

Specifies that an otherwise privileged communication does not lose its status as such because it was communicated by electronic means.

► CPLR §4547 Privileged Communications; Electronic Communication thereof.

No communication privileged under this article shall lose its privileged character for the sole reason that it was communicated by electronic means or because persons necessary for the delivery or facilitation of such electronic communication may have access to the content of the communication.

Chapter 436 (S.6283) (Public Officers Law—Residency requirements—Assistant public defenders—Yates County). Effective: July 22, 1998.

Amends Public Officers Law §3 to provide that an assistant public defender in Yates County may also reside in an adjoining county.

Chapter 3 (S.6796-c) (Criminal history background checks for in-home child caregivers). Effective: October 27, 1998.

Establishes a procedure whereby a parent or guardian may obtain a criminal history background check from the Division of Criminal Justice Services and the FBI on prospective in-home child caregivers [Executive Law §837-n].

Sunset Provisions Extended

Chapter 73 (A.10995) (Sunset Extended—Arts and Cultural Affairs Law—Ticket Scalping). Sunset Extended to June 1, 1999.

Extends the sunset clause on New York’s scalping laws (Arts and Cultural Affairs Law Article 25) to June 1, 1999.

Chapter 38 (S.6504) (Sunset Extended—Medical Parole— Executive Law §259-r). Sunset extended to April 10, 2000.

Extends the sunset provision of the medical parole law [Executive Law §259-r] to April 10, 2000.

Chapter ___ (S.6704-a) (Sunset Extended—Audio-Visual Court Appearances). Effective: Sunset extended to December 31, 2001.

Extends the sunset provision of CPL Article 182, which authorizes an experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television in certain counties, to December 31, 2001. ⚡