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## Introduction

Proving there is a God, or maybe only that high-pressure tactics are effective in Albany, the Legislature raised 18-B rates for the first time since 1986. Beginning January 1, 2004, the new rates will be \$75 per hour for both in and out-of-court work, except for misdemeanors and violations, where the rate will be \$60. The change was enacted swiftly on the heels of Justice Lucindo Suarez's injunction in *NYCLA v Patkai* raising rates to \$90 per hour. The raise was included in a budget bill vetoed by the Governor and overridden by the Legislature on May 15th.

The Legislature also accomplished some modest Rockefeller Drug Law reform when it enacted a merit time allowance of 1/3 off the minimum term for A-I felony drug offenders. The campaign to bring about more comprehensive reform of the drug laws suffered its usual sisyphian fate. While advocates for reform urged the Legislature to "Drop the Rock," the effort came up frustratingly short in 2003. And so, the long uphill push begins again next year.

As part of the budget overrides, the Legislature also enacted a new system of presumptive parole release for non-violent offenders who have been granted a certificate of earned eligibility. Under the plan, such inmates may now be released by DOCS without approval from the Board of Parole. Whether this plan will actually boost release rates, or merely decrease the Board's parole release interview caseloads, remains to be seen.

Other noteworthy developments in the 2003 Regular session included an omnibus "clean-up" bill of the Sexual Assault Reform Act of 2000, an increase in sentencing for juvenile offenders convicted of murder in the second degree, and a video voyeurism bill dubbed "Stephanie's Law," after a Long Island woman whose landlord installed a hidden camera in her bedroom.

Summarized below are bills affecting public defense work that have been enacted into law by legislative override, or have been signed into law by Governor Pataki. Also included are bills that have passed both houses and will be presented to the Governor for his approval or veto. The complete text of all bills and chapter laws can be found on the New York State Senate and Assembly web sites ([www.senate.state.ny.us](http://www.senate.state.ny.us) and [www.assembly.state.ny.us](http://www.assembly.state.ny.us)). These sites can be accessed on the Research Links page of NYSDA's web site ([www.nysda.org](http://www.nysda.org)).

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## Assigned Counsel Rate Increase and Revenue Sharing

**Chapter 62 (S.1406-B/A.2106-B) (Assigned Counsel Rate Increase — County Revenue Sharing. Effective: January 1, 2004.**

Governor Pataki included increases in assigned counsel rates in his budget submissions this year, but disapproved the increase as part of his overall veto of the budget in May. The increases were then enacted into law when the Senate and Assembly overrode the vetoes on May 15th. Beginning Jan. 1, 2004, rates will increase to \$75 per hour for both in-court and out-of-court work for all matters except misdemeanors and violations, which will pay \$60 per hour. The statutory caps have been raised to \$2400 in misdemeanor and violation cases and \$4,400 in all other cases. Fees for experts and investigators under County Law § 722-c have been increased from \$300 to \$1000 per retainer. For both attorney and expert fees, compensation in excess of these limits can be awarded in extraordinary circumstances.

The legislation includes a revenue sharing component that is designed to provide funds to counties according to their percentage share of the statewide total of local funds expended for mandated representation of indigent persons. The Indigent Legal Services Fund will be fed by four new revenue streams, including a \$35 fee for the lifting of a DMV license suspension, a portion of the \$52 fee to be charged by the Office of Court Administration for criminal history searches of county databases, an \$50 increase in the biennial attorney registration fee, and a \$10 increase in mandatory surcharges for parking violations. From this pool of money, the state will skim up to \$25 million to reimburse itself for the cost of the law guardian program, and the remaining pot will then be distributed to counties and the City of New York beginning in 2005. The legislation also establishes a seven-member task force, which is charged with reviewing the sufficiency of the rates and caps and issuing a single report by Jan. 15, 2006.

## Merit Time for A-1 Felony Drug Offenders/ Presumptive Parole Release

**Chap. 62 S.1406-B/A.2106-B (Budget Override- Merit time for A-I felony drug offenders — Presumptive parole release for holders of earned eligibility certificates). Effective: May 15, 2003**

### Merit Time

As part of the package of vetoed budget bills overridden by the Assembly and Senate, the Legislature extended merit time (Correction Law § 803) to inmates serving A-I felony drug sentences. While the regular merit time incentive is 1/6th off the minimum term, A-I felony drug

offenders (who were previously ineligible for merit time) will now be eligible for a 1/3 reduction. Thus, an inmate serving 15 years to life could become eligible for discretionary parole release consideration after 10 years.

The credit is unavailable to an inmate who is also serving a sentence for a violent felony, or for manslaughter in the second degree, vehicular manslaughter in the first or second degrees, criminally negligent homicide, incest, or any (non-violent) sex offense defined in Penal Law Article 130 or section 263. To earn a merit time reduction, an inmate must successfully participate in prison work and treatment programs, earn a GED, or an alcohol and substance abuse treatment certificate, or a vocational trade certificate, or perform 400 hours in a community work crew.

### *Presumptive Release*

Inmates serving indeterminate sentences for non-violent felonies who have a minimum term of eight years or less may now be released to parole supervision without prior approval of the Board of Parole under a new system of "presumptive release" (new Correction Law § 806). To be eligible for presumptive release an inmate must obtain a certificate of earned eligibility through successful participation in assigned work and treatment programs (*see* Correction Law § 805), and serve the minimum term, or the minimum as reduced by merit time. Release to parole supervision will then be in the discretion of the commissioner of DOCS, who "may deny presumptive release to any inmate whenever the commissioner determines that such release may not be consistent with the safety of the community or the welfare of the inmate." Inmates denied presumptive release by the commissioner will be eligible to appear before the Board of Parole at the usual time for discretionary parole release consideration.

Presumptive release is unavailable to an inmate who is presently convicted, or who was ever previously convicted, of the following offenses: a Class A-I felony (drug or non-drug), a violent felony, manslaughter in the second degree, vehicular manslaughter in the first or second degrees, criminally negligent homicide, incest or any (non-violent) sex offense defined in Penal Law Article 130 or section 263.

### *Grounds for Denial of Merit Time and Presumptive Release*

Merit time and presumptive release may be denied as a sanction for a "serious disciplinary infraction," which has been broadly defined by the Department of Correctional Services (DOCS) to mean a single guilt adjudication from among 18 categories of prison misbehavior, or cumulative receipt of disciplinary sanctions totaling 60 or more days of Special Housing Unit (SHU) or keeplock time, or any recommended loss of good time. *See* 7 NYCRR Part 280. Under the 1997 merit time law, DOCS has applied these disciplinary infraction exclusions

retroactively, a policy that may seriously affect the eligibility of A-I drug offenders who have been imprisoned for many years. Merit time and presumptive release can also be withheld as a sanction if an inmate files a civil lawsuit that is deemed frivolous by the court in which it was filed.

## ***Sexual Assault Reform Act of 2000 Clean-up Bill***

### **Chap. 264 (S.5690) (Sexual Assault Reform Act Clean-Up Bill). Effective: November 1, 2003.**

This bill clears up many drafting errors and problems in the Sexual Assault Reform Act (SARA) of 2000, changes the nomenclature of some sex offenses, and makes a few substantive changes in the law. Surprisingly, not all of these changes are unfavorable to criminal defendants.

### *Nomenclature Changes*

The Legislature has substituted the term "criminal sexual act" for the crime of sodomy. The term "deviate sexual intercourse" has been replaced with "oral sexual conduct" and "anal sexual conduct."

### *Persistent Sexual Abuse*

The definition of persistent sexual abuse (Penal Law § 130.53) as drafted in the SARA was seriously flawed. It provided that a "person is guilty of persistent sexual abuse when he or she stands convicted of sexual abuse in the third degree . . . or sexual abuse in the second degree" and within a 10 year period was twice previously convicted of either of these crimes in separate criminal transactions for which sentence was imposed. It is doubtful that a valid charge could have been leveled under this definition because the crime, as drafted, literally required a finding of guilt as a predicate to the filing of the charge itself. The section has been amended to fix this drafting error and to add forcible touching to the list of offenses covered by the statute. The statute also expands the type of prior convictions that may support a charge of persistent sexual abuse by adding any Penal Law Article 130 felony conviction as a predicate offense. With changes noted in italics, the section now provides:

### **Penal Law § 130.53 — Persistent Sexual Abuse**

A person is guilty of persistent sexual abuse when he or she *commits the crime of forcible touching, as defined in section 130.52 of this article*, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of *forcible touching, as defined in section 130.52 of this article*, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as

defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

## **Second Child Sexual Assault Sentencing**

Changes were made in the second child sexual assault felony offender statute (Penal Law § 70.07). First, sentencing courts will now have discretion not to impose an enhanced sentence under this section when the defendant was under the age of 18 at the time of commission of the predicate offense. In such circumstances, the court may choose to sentence the defendant as a second violent felony offender pursuant to Penal Law § 70.04. However, the statute is less clear about the court's sentencing options when the instant offense is not a violent felony. Presumably, the court would have implicit authority to impose sentence under the second felony offender law (Penal Law § 70.06). Secondly, the Class E felony offense of persistent sexual abuse has been excluded from the definition of a "sexual assault against a child" [Penal Law § 70.07 (2)] and thus cannot serve as the basis for an enhanced sentence under the statute.

## **Persistent Felony Offender Sentencing**

Penal Law § 70.10 (1) has been amended to exclude a prior conviction for persistent sexual abuse as a prior felony conviction within the meaning of the discretionary persistent felony offender law.

## **Bail restrictions eased for minor defendants**

The SARA amended CPL sections 530.40 (3), 530.45 (1), and 530.50 to specify that a court cannot order bail or recognizance after a defendant's conviction of a Class B or C Article 130 sex offense committed or attempted to be committed against a person less than 18 years old (including bail pending appeal). The restriction has been eased by authorizing bail or recognizance in the court's discretion when the defendant was less than 18 at the time of the commission of the offense.

## **"Sexual Assault" defined**

The SARA doubled the applicable periods of probation for a "sexual assault" [Penal Law § 65 (3)]. The statute now specifies that a "sexual assault" means "an offense defined in Penal Law Article 130, or 263 or incest or an attempt to commit any of the foregoing offenses.

## **Forcible Touching — Lack of Consent**

The bill amends Penal Law § 130.05 (2)(c) to provide that lack of consent in a forcible touching prosecution can be established by "any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct." This change was enacted to allow circumstantial evidence of lack of consent in forcible touching prosecutions, and to countermand the holding in *People v Parbhu*, 191 Misc2d 473 (Crim Ct. New York Co.

2002); see also *People v Hernandez*, NYLJ, 9/27/02 at p. 19, col. 1. In *Parbhu*, a bystander on a subway platform witnessed the defendant rub against an unidentified woman, who screamed and ran away. The trial court dismissed the forcible touching charge for lack of a supporting deposition from the unidentified victim. Under the revised statute, lack of consent could be inferred in these circumstances.

## **Marriage defense reinstated for certain crimes**

The SARA repealed the marriage exemption for all sex offenses, including those based on the age or mental capacity of the victim. Because 14, 15 and 16-year-olds can legally marry in New York State, this oversight exposed persons to possible criminal prosecution for otherwise lawful marital relations with an underage spouse, or with a spouse who is otherwise incapable of consent because of a mental disability. In addition, elimination of the marriage exemption had implications for marital relations between health care providers and their patient-spouses. The bill restores the marriage exemption as an ordinary defense in these situations. Penal Law §130.10 (4) now provides:

In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, or a client or patient and the actor is a health care provider, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

## **Facilitating a sex offense with a controlled substance**

The SARA established the crime of facilitating a sex offense with a controlled substance (Penal Law § 130.90), which is committed when a person "knowingly and unlawfully possesses a controlled substance and administers such substance to another person without such person's consent with the intent to commit against such person conduct constituting a felony defined in [Penal Law Article 130]." This bill adds to the list of substances covered by the statute "any preparation, compound, mixture, or substance that requires a prescription to obtain."

Finally, the bill adds gamma hydroxybutyric acid to the list of controlled substances listed in Penal Law § 220.06 (criminal possession of a controlled substance in the fifth degree); Penal Law § 220.09 (criminal possession of a controlled substance in the fourth degree) and Penal Law § 220.34 (criminal sale of a controlled substance in the fourth degree).

## **Sex Offender Registration Act**

**Chap. 62 (S.1406-B/A.2106-B) (Sex Offender Registration and Change of Address Fee). Effective: May 15, 2003.**

Imposes a \$50 fee on any person convicted of a Sex Offender Registration Act (SORA) offense, in addition to the mandatory surcharge and crime victim assistance fee; imposes a \$10 fee any time a sex offender submits a change of address or change of status form to Division of Criminal Justice Services (DCJS); specifies that "any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status."

**Chap. 10 (S.246) (Sex Offender Registration Act — Required Reporting of Place of Employment).**

**Effective: July 5, 2003**

Amends the SORA to require persons designated Class 3 sex offenders to report their place of employment to the DCJS and authorizes the release of such information to the public.

**Chap. 316 (A.707) (Sex Offender Registration Act — Release of Photographs). Effective: November 1, 2003.**

Amends Correction Law § 168-1 to require police to release a photograph and description of a sex offender when community notification is undertaken with respect to Level 2 or 3 sex offenders (such action was previously discretionary).

**Chap. 200 (S.948) (Sex Offender Registration Act — False Notice). Effective: November 1, 2003.**

Makes it a crime to "knowingly simulate, or to cause or to permit to be disseminated" any SORA notification that "falsely suggests that an individual is a registered sex offender." (Class A misdemeanor) (New Correction Law § 168-v)

**Penal Law**

**Chap. 174 (A.7482) (Juvenile Offenders — Increased Sentence for Murder 2nd degree). Effective: November 1, 2003**

Increases the sentencing parameters for 14 and 15-year-olds convicted of intentional or depraved indifference murder to a minimum of 7½ years to life and a maximum of 15 years to life. For all 13-year-olds, and 14 and 15-year-old defendants convicted of felony murder, the sentencing range remains the same, *i.e.*, a minimum of 5 years to life and a maximum of 9 years to life.

**Chap. 69 (S.3060-B) (Video Voyeurism—"Stephanie's Law"—as amended by Chap. 157 (S.5567) enacting technical corrections to such law). Effective: August 11, 2003**

Enacts new provisions relating to the viewing, broadcasting or recording of images of the sexual or other intimate parts of another person without his or her consent.

**Penal law § 250.45 Unlawful surveillance in the second degree**

A person is guilty of unlawful surveillance in the second degree when:

1. For his or her own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or
2. For his or her own, or another person's sexual arousal or sexual gratification, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or
3. (a) For no legitimate purpose, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower or any room assigned to guests or patrons in a motel, hotel or inn, without such person's knowledge or consent.  
  
(b) For the purposes of this subdivision, when a person uses or installs, or permits the utilization or installation of an imaging device in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower or any room assigned to guests or patrons in a hotel, motel or inn, there is a rebuttable presumption that such person did so for no legitimate purpose; or
4. Without the knowledge or consent of a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record, under the clothing being worn by such person, the sexual or other intimate parts of such person.

(Class E felony)

A conviction under subdivisions 2, 3 or 4 will subject the defendant to the Sex Offender Registration Act unless,

“upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate.

**Penal Law § 250.50 Unlawful surveillance in the first degree**

A person is guilty of unlawful surveillance in the first degree when he or she commits the crime of unlawful surveillance in the second degree and has been previously convicted within the past ten years of unlawful surveillance in the first or second degree.

(Class D felony)

**Penal Law § 250.55 Dissemination of an unlawful surveillance image in the second degree**

A person is guilty of dissemination of an unlawful surveillance image in the second degree when he or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree, intentionally disseminates such image or images.

(Class A misdemeanor)

**Penal Law § 250.60 Dissemination of an unlawful surveillance image in the first degree.**

A person is guilty of dissemination of an unlawful surveillance image in the first degree when:

1. He or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree, sells or publishes such image or images; or
2. Having created a surveillance image in violation of section 250.45 or 250.50 of this article, or in violation of the law in any other jurisdiction which includes all of the essential elements of either such crime, or having acted as an accomplice to such crime, or acting as an agent to the person who committed such crime, he or she intentionally disseminates such unlawfully created image; or

3. He or she commits the crime of dissemination of an unlawful surveillance image in the second degree and has been previously convicted within the past ten years of dissemination of an unlawful surveillance image in the first or second degree.

(Class E felony)

**Penal Law § 250.40 unlawful surveillance; definitions**

1. “Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy.
2. “Imaging device” means any mechanical, digital or electronic viewing device, camera or any other instrument capable of recording, storing or transmitting visual images that can be utilized to observe a person.
3. “Sexual or other intimate parts” means the human male or female genitals, pubic area or buttocks, or the female breast below the top of the nipple, and shall include such part or parts which are covered only by an undergarment.
4. “Broadcast” means electronically transmitting a visual image with the intent that a person views it.
5. “Disseminate” means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.
6. “Publish” means to (a) disseminate, as defined in subdivision five of this section, with the intent that such image or images be disseminated to ten or more persons; or (b) disseminate with the intent that such images be sold by another person; or (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public.
7. “Sell” means to disseminate to another person, as defined in subdivision five of this section, or to publish, as defined in subdivision six of this section, in exchange for something of value.

**Penal Law §250.65 — Exclusions**

1. The provisions of sections 250.45, 250.50, 250.55 and 250.60 of this article do not apply with

respect to any:

Law enforcement personnel engaged in the conduct of their authorized duties;

Security system wherein a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security; or

Video surveillance devices installed in such a manner that their presence is clearly and immediately obvious.

2. With respect to sections 250.55 and 250.60 of this article, the provisions of subdivision two of section 235.15 and subdivisions one and two of section 235.24 of this chapter shall apply.

**Chap. 62 (S.1406-B/A.2106) (DNA databank fee). Effective: May 15, 2003**

Enacts a new \$50 fee for defendants convicted of a DNA databank crime, to be paid in addition to the mandatory surcharge and crime victim assistance fee.

**Chap. 331 (A.8999) (Criminal Contempt in the first degree as predicate conviction for offense level upgrade). Effective: November 1, 2003.**

Elevates the crime of criminal contempt in the second degree (Penal Law § 215.50 — Class A misdemeanor) to criminal contempt in the first degree (Penal Law § 215.51 — Class E felony) when the defendant has a prior conviction for criminal contempt in the first or second degrees within the preceding five years. The former statute was limited to prior convictions for criminal contempt in the second degree only.

**Chap. \_\_\_ (S.519) (Stalking — Ten or more persons). Effective: November 1, 2003**

Adds a new subdivision to Penal Law § 120.55 to elevate conduct constituting stalking in the third degree (Class A misdemeanor) to stalking in the second degree (Class E felony) when 10 or more victims are involved.

**Penal Law § 120.55**

A person is guilty of stalking in the second degree when he or she:

*(5) commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against 10 or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.*

**Chap. 276 (S.1437) (Criminal Mischief — Motor Vehicles — Offense Level Upgrade). Effective: November 1, 2003.**

Elevates the crime of criminal mischief in the fourth degree (Class A misdemeanor) to criminal mischief in the third degree (Class E felony) under certain circumstances when the property damaged is a motor vehicle:

**Penal Law § 145.05**

A person is guilty of criminal mischief in the third degree when, with intent to damage property or another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

(1) damages the motor vehicle of another person, by breaking into such vehicle when it is locked with the intent of stealing property, and within the previous ten year period, has been convicted three or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of criminal mischief in the fourth degree as defined in section 145.00, criminal mischief in the third degree as defined in this section, criminal mischief in the second degree as defined in section 145.10, or criminal mischief in the first degree as defined in section 145.12 of this article  
...

**Chap. \_\_\_ (S.1235) (Obstructing Emergency Medical Services). Effective: November 1, 2003.**

Establishes the new offense of obstructing emergency medical services:

**Penal Law § 195.16**

A person is guilty of obstructing emergency medical services when he or she intentionally and unreasonably obstructs the efforts of any service, technician, personnel, system or unit specified in section three thousand one of the public health law in the performance of their duties.

(Class A misdemeanor)

**Chap. \_\_\_ (S.3479) (Assault on station agent). Effective: November 1, 2003**

In 2002 Penal Law § 120.05 was amended to elevate a simple assault on train and bus operators, ticket inspectors and conductors to assault in the second degree. This legislation adds "station agents" to the list of persons covered by the statute.

**Chap. \_\_\_ (A.6893) (Unpermitted Use of Indoor Pyrotechnics). Effective: November 1, 2003.**

In response to the tragic rock concert fire in Rhode Island in Feb. 2003 that claimed 100 lives, the Legislature has passed comprehensive amendments to Penal Law 405 governing permits for indoor pyrotechnic displays. The legislation includes four new criminal offenses: unpermit-

ted use of a indoor pyrotechnics in the second degree (Penal Law § 405.12), which is committed when a person responsible for obtaining a necessary permit “ignites or detonates pyrotechnics” in a building without a necessary permit, or knowingly permits another to do so (Class A misdemeanor). A person is guilty of unpermitted use of indoor pyrotechnics in the first degree (Penal law § 405.14) when he or she commits the second-degree crime and has a prior conviction for the 1st or 2nd degree crime within the past 5 years (Class E felony). The bill also includes two degrees of aggravated unpermitted use of indoor pyrotechnics, which applies when the defendant recklessly causes physical injury to another person or causes property damage of more than \$250 (2nd degree — Penal Law § 405.16 — Class E felony), or recklessly causes serious physical injury or death to another person (1st degree — Penal Law § 405.18 — Class D violent felony).

**Chap. \_\_\_ (A.3936) (Slot Machines — Transportation and Repair). Effective: 30 days after Governor’s signature**

Amends Penal Law § 225.30 to authorize possession of slot machines when necessary for the training of persons in the repair and reconditioning of such machines for operation in a casino.

**Chap. 172 (A.7048) (Billies and Blackjacks — Exemption from Criminal Liability). Effective: Upon Governor’s signature.**

Exempts persons involved in the manufacturing and transport of blackjacks and billies from criminal liability when possession of such weapons is pursuant to a sales contract with a government entity.

**Criminal Procedure Law**

**Chap. \_\_\_ (S.2970) (Not Responsible Pleas or Verdicts — Order of Conditions). Effective: Upon Governor’s signature.**

Expressly authorizes a court to issue an order of protection (stay-away order) in the context of an order of conditions issued to persons found not responsible by reason of mental disease or defect (Amends CPL § 330.20).

**Chap. \_\_\_ (S.5414) (Payment of fines, fees and charges by credit card). Effective: Upon Governor’s signature.**

Amends CPL § 420.05 to authorize the payment of a fine, mandatory surcharge or crime victim assistance fee by credit card upon conviction of any offense. The statute was previously limited to payment of fines in VTL matters.

**Chap. 299 (S.3132) (Federal Law Enforcement officers). Effective: August 5, 2003.**

Adds federal air marshal program special agents to the list of federal law enforcement officers in Criminal Procedure Law § 2.15.

**Chap. 300 (S.3239) (Police officers — Power to arrest for petty offense). Effective: November 1, 2003**

Amends CPL § 140.10 (2) to authorize a police officer to arrest a person for a petty offense committed within 100 yards of the geographical area of the officer’s employment.

**Chaps. (various) (Peace office status). Effective: as indicated**

Confers peace officer status on:

Chap. \_\_\_ (S.3090) — members of the security force employed by Erie County Medical Center. Effective: 180 days after Governor’s signature

Chap. \_\_\_ (S.3428) — Syracuse University peace officers. Effective: Upon Governor’s signature

Chap. \_\_\_ (S.4393) — public safety officers appointed by the commissioner of public safety of the town of Hempstead. Effective: Upon Governor’s signature.

Chap. \_\_\_ (A.1553) — Uniformed members of the fire marshal’s office in the town of Riverhead. Effective: Upon Governor’s signature.

Chap. \_\_\_ (A.1852) — Uniformed court officers of the village of Southampton. Effective: Upon Governor’s signature.

Chap. 121 (A.5422) — officers of the Buffalo Municipal Housing Authority who have achieved or been granted that status of a sworn police officer and have been certified by the Division of Criminal Justice Services as successfully completing an approved basic course for police officers. Effective: July 1, 2003.

Chap. \_\_\_ (A.6439) — Watershed protection and enforcement officers of the city of Peekskill. Effective: Upon Governor’s signature.

Chap. \_\_\_ (A.6430) — Animal control officers employed by the city of Peekskill. Effective: Upon Governor’s signature.

Chap. \_\_\_ (A.2902) — Security hospital treatment assistants in the office of mental health while performing duties in or arising out of the course of their employment. Effective: November 1, 2003.

**Alcohol Related Offenses**

**Chap. 691 Laws of 2002 (DWI prior offenses — mandatory jail or community service — mandatory installation of ignition interlock devices). Effective: September 30, 2003**

As part of a package of bills passed in December 2002 decreasing the BAC level for driving while intoxicated to

.08%, the Legislature also passed a bill mandating jail time or community service for defendants with prior DWI convictions within the preceding 5 years. The bill also includes a troublesome provision that seems to require a court to order the installation of ignition interlock device on any motor vehicle owned by a person so sentenced.

VTL § 1193 (1-a) and (1-b) will now require a mandatory jail sentence of 5 days, or, as an alternative, a 30 day community service sentence, on any defendant who commits the crime of DWI [VTL § 1192 (2) or (3)] who had a prior DWI conviction within the preceding 5 years, and a mandatory jail sentence of 10 days, or 60 days of community service, for defendants who have been convicted on "two or more occasions" of DWI within the preceding 5 years.

Chapter 691 (2002) also includes the following section concerning ignition interlock devices that may spell trouble for our indigent defendants inasmuch as the cost of such devices must be fully borne by the defendant [VTL § 1198 (5)]:

A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: i) order the installation of an ignition interlock device approved pursuant to section eleven hundred ninety eight of this article on each motor vehicle owned by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court; and (ii) order that such person receive an assessment of the degree of their alcohol abuse. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence.

**Chap. 62 S.1406-B/A.2106-B (Budget Bill Override) (DWI — DWAI — \$25 additional surcharge). Effective: November 11, 2003.**

Imposes an additional \$25 surcharge upon conviction of DWI or DWAI (New VTL § 1809-c).

**Chap. 153 (S.5517) (DWAI — .07% or more — technical correction). Effective: (main bill) July 1, 2003 and (amendment) July 22, 2003.**

Last December, the Legislature lowered the blood alcohol level threshold for driving while intoxicated to .08% and the prima facie evidence standard for driving while impaired to "more than .07% and less than .08%." Therefore, as enacted, a blood alcohol reading of .07% would not have constituted prima facie evidence of impairment. The statute has now been amended to provide that a blood alcohol level of .07% or more but less than .08% shall be prima facie evidence that a person was impaired by the consumption of alcohol.

**Chap. 236 (S.4992) (DWI — BAC — Commercial Drivers). Effective: July 1, 2003 and November 1, 2003**

As part of the legislation that lower the blood alcohol threshold for driving while intoxicated to .08%, the Legislature also lowered the level II standard for drivers of commercial motor vehicles, which previously ranged from .07% to .09% to .07% only [VTL § 1192 (6)]. This bill changes the standard to more than .06% but less than .08%. (Effective: July 1, 2003). The bill also establishes a new level I standard for drivers of commercial vehicles, which previously was set at .04% to .07%, to .04% or more but less than .06% (Effective: November 1, 2003).

**Chap. \_\_\_ (S.4990-B) (Boating while intoxicated — .08% standard adopted). Effective: November 1, 2003**

Amends Navigation Law § 49-a to establish a .08% threshold for boating while intoxicated; establishes a test result of .07% but less than .08% as prima facie evidence that a person was not intoxicated but was impaired by alcohol; and establishes a test results of more than .05% but less than .07% as prima facie evidence that a person was not intoxicated, but such a reading is considered relevant evidence in determining whether a person was impaired by alcohol.

**Chap. \_\_\_ (S.4991) (Snowmobiling while intoxicated — .08 standard adopted). Effective: November 1, 2003**

Amends Parks, Recreation and Historic Preservation Law § 25.24 to establish a .08% threshold for snowmobiling while intoxicated; establishes a test result of .07% but less than .08% as prima facie evidence that a person was not intoxicated but was impaired by alcohol; and establishes a test results of more than .05% but less than .07% as prima facie evidence that a person was not intoxicated, but such a reading is considered relevant evidence in determining whether a person was impaired by alcohol.

**Family Court Practice**

**Chap. 75 (A.4095) (Family Court Hearing Officers — Term of Office Extended). Effective: June 18, 2003**

Increases from 3 to 5 years the length of the term for which a Family Court Hearing Officer may be reappointed.

**Chap. \_\_\_ (S.1022-A) (Social Services Law — Unauthorized Fees for Adoption). Effective: November 1, 2003.**

Criminalizes the offering or acceptance of a fee of \$5000 or more for the placing out or adoption of a child, by other than an authorized agency, as a Class E felony, and provides that a repeat offense shall constitute a Class D felony.

**Chap. \_\_\_ (S.3600) (Willful violation of support orders — Expedited procedures). Effective: Upon Governor's signature.**

Enacts procedures designed to expedite court review of a hearing officer's finding that a person has willfully violated a support order.

**Chap. \_\_\_ (S.5249) (Child Protective Reports). Effective: 90 days after Governor's signature**

Amends Family Court Act § 1055 and Social Services Law § 392 to require reports to the court within 30 days of any change in a child protective or voluntary foster care placement of a child, as well as a statement detailing the reasons for such change and why it is in the best interests of the child.

**Chap. 81 (A.7487) (Family Court hearing examiners — now support magistrates). Effective: June 18, 2003**

Changes the designation of Family Court hearing examiners to "support magistrates."

### **Corrections**

**Chap. \_\_\_ (A.851) (Interstate Compact for Adult Offender Supervision). Effective: July 1, 2002, and when compact adopted by 35 total states.**

Enacts the Interstate Compact for Adult Offender Supervision (Executive Law § 259-mm), which, when formally adopted by 35 signatory states, will replace the existing compact provisions (Executive Law § 259-m).

**Chap. 135 (S.3414) (Yates County Jail). Effective: July 22, 2003**

Amends Correction Law § 500-a to permit the Yates County Jail to be used for the detention of persons under arrest who are awaiting arraignment.

**Chap. 171 (A.7024) (Cortland County Jail). Effective: July 22, 2003**

Amends Correction Law § 500-a to permit the Cortland County Jail to be used for the detention of persons under arrest who are awaiting arraignment.

**Chap. 189 (A.8798) (Monroe County Jail). Effective: July 22, 2003**

Amends Correction Law § 500-a to permit the Monroe County Jail to be used for the detention of persons under arrest who are awaiting arraignment.

### **Vehicle and Traffic Law**

**Chap. \_\_\_ (A.5418) (VTL — Local Vehicle Forfeiture Laws — Innocent Owners and Lienholders). Effective: Upon Governor's signature.**

Adds a new section 432 to the Vehicle and Traffic Law

to require notice to owner of a motor vehicle and any lienholder of any forfeiture actions under a local law, and to preclude the forfeiture of a vehicle "to the extent of the interest of an owner or lienholder by reason of any act or omission which is established by such owner or lienholder to have committed without the knowledge of that owner or lienholder or without the consent of that owner or lienholder.

**Chap. 231 (S.4179) (VTL — Posting of advertisements on windshields). Effective: September 1, 2003**

Establishes a rebuttable presumption in New York City that the "person whose name, telephone number or other identifying information appears on any handbill or other form of advertisement attached to a windshield or windshield wipers of a motor vehicle shall be in violation" of VTL provisions prohibiting such attachments.

### **Miscellaneous**

**Chap. \_\_\_ (A.3039) (Parking Violations Bureau — Fine reimbursement upon reversal). Effective: 30 days after Governor's signature.**

Amends VTL § 242 to provide a 30-day time frame for reimbursement of fines when a parking violation adjudication is reversed, and a late reimbursement penalty schedule equivalent to the schedule for late payment of the underlying fine.

**Chap. \_\_\_ (A.3679) (Subpoena Duces Tecum — Service required on Parties). Effective: January 1, 2004.**

Amends CPLR § 2303 (1) to provide that "a copy of any subpoena duces tecum served in a pending action shall also be served in the manner set forth in [CPLR § 2103] on each party who has appeared in the action so that it is received by such parties promptly after service on the witness and before the production of books, paper or other things."

**Chap. \_\_\_ (A.7050) (Navigation Law — Leaving the Scene of an Accident). Effective: November 1, 2003.**

Enacts provisions in the Navigation Law requiring operators of vessels (including rowboats and canoes) to promptly report accidents and provides penalties for violations thereof, *i.e.*, leaving the scene of an accident involving property damage (violation), personal injury (Class B misdemeanor), subsequent violation of personal injury provision within 5 years (Class A misdemeanor), and serious physical injury or disappearance of a person (Class E felony) [New Navigation Law § 47].

**Chap. 391 (A.8136) (Crime Victims Board — Financial counseling costs compensable for certain crime victims). Effective: August 19, 2003**

Amends Executive Law §§ 621 and 631 to provide that

the Crime Victims Board may compensate elderly and disabled crime victims for the cost of financial counseling commenced within one year of the date of the crime.

### **Sunset Clause Extended**

**Chap. 87 (S.1820) (Sunset Extended — VTL — suspension of driver's license for failure to pay child support). Sunset extended to June 30, 2005.**

Legislation was enacted in 1995 to mandate suspension of a parent's driver's license for failure to pay four or more months of child support (L.1995, chap. 81). The sunset clause of this law has been extended from June 30, 2003 to June 30, 2005.

**Chap. 303 (S.3999) (Family Protection and Domestic Violence Intervention Act of 1994). Sunset Clause Extended to September 1, 2005.**

Extends the sunset clause of the Family Protection and Domestic Violence Intervention Act of 1994 (*e.g.*, mandatory arrest) from September 1, 2003 to September 1, 2005.

**Chap. \_\_\_ (S.4873) (Sunset Extended — Driver's License Suspension after Drug Conviction). Sunset Extended to October 1, 2005.**

In 1993 the Legislature passed a law requiring a 6-month suspension of the driver's license, or a 6-month delay in eligibility for a driver's license, of any person convicted of a misdemeanor or felony drug offense, including juvenile and youthful offender adjudications (L. 1993, chap. 533). The sunset clause of this legislation has been extended from October 1, 2003 to October 1, 2005.

**Chap. 388 (A.7972) (Sunset Extended – Closed-Circuit testimony of child witnesses). Sunset extended to September 1, 2005**

Extends the sunset clause of CPL Article 65 relating to the closed-circuit testimony of certain child witnesses from September 1, 2003 to September 1, 2005.

### **Chapter 16 (S.5544) (Omnibus Sunset Extender)**

*Extends the sunset clauses of the following programs and laws:*

Correction Law Article 22-A (§ 630 et seq.) — Parole release from a definite sentence (Sept. 1, 2005)

Correction Law Article 26-A — SHOCK Incarceration Program (Sept. 1, 2005)

Correction Law § 805 — Earned Eligibility Program (Sept. 1, 2005)

Correction Law Article 26 (§ 851 et seq) — Temporary Release Programs (Sept. 1, 2005)

CPLR § 1101 (f) — Fees for inmate filings (Sept. 1, 2005)

Penal Law §§ 205.16, 205.17, 205.18, 205.19 — Absconding offenses (Sept. 1, 2005)

Penal Law § 60.35 — No waiver of mandatory surcharge (Sept. 1, 2005)

Executive Law § 259-r — Medical Parole (Sept. 1, 2005)

Correction Law § 189 — \$1 weekly incarceration fee (Sept. 1, 2005)

Correction Law § 2 (18) — ASAT (Sept. 1, 2005)

Executive Law § 259-a (9) — Parole supervision fee (Sept. 1, 2005)

Executive law § 259-c, Family Court Act § 252-a — Probation Fees (Sept. 1, 2005)

Public Health Law § 3381 — Sale and possession of hypodermic needles and syringes (Sept. 1, 2007)

VTL — Mandatory Surcharges (Sept. 1, 2005)

VTL § 1809 — Ignition Interlock Program (Sept. 1, 2005) ♪

## **Pro Bono Counsel Needed for Death Row Prisoners**

Over 3,500 people are on death row across the United States. Hundreds of them have no legal help. Many states do not appoint lawyers to handle capital habeas cases. Many that do pay only token fees and provide few or no funds for necessary investigation and expert assistance. Shortened Federal habeas time limits are running out for many prisoners who have no way to exhaust their state remedies without the assistance of attorneys, investigators, mental health professionals and others. Competent representation can make a difference. A significant number of successful cases have been handled by pro bono counsel. To competently handle a capital post-conviction case from state through Federal habeas proceedings requires hundreds of attorney hours and a serious financial commitment. The **ABA Death Penalty Representation Project** seeks lawyers in firms with the necessary resources to devote to this critical effort. Having in mind the level of commitment required, criminal defense lawyers and practitioners in civil firms able to take on a capital post-conviction case and provide the level of representation that many death row prisoners did not receive at trial are invited to contact the project: Robin M. Maher, Director, ABA Death Penalty Representation Project, 50 F Street NW, Suite 8250, Washington, DC 20001; e-mail: maherr@staff.abanet.org; 202-661-6820. For more information, also see the Project's web site: <http://www.probono.net> (Death Penalty Practice Area).