

**STATUS:****S7995** DEFRANCISCO

Judiciary Law

TITLE....Provides that the chief administrator of the courts may direct the use of mechanical recording of testimony

04/28/08 REFERRED TO JUDICIARY

05/13/08 1ST REPORT CAL.1107

05/14/08 2ND REPORT CAL.

**SUMMARY:**

DeFRANCISCO

Add S290-a, Judy L

Provides that the chief administrator of the courts may direct the use of mechanical recording of testimony.

**BILL TEXT:****STATE OF NEW YORK**

7995

**IN SENATE**

April 28, 2008

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to mechanical recording of testimony

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

- 1 Section 1. The judiciary law is amended by adding a new section 290-a  
2 to read as follows:
- 3 § 290-a. Mechanical recording of testimony. 1. Notwithstanding any  
4 other provision of law, the chief administrator of the courts may direct  
5 the use of mechanical recording of testimony and of other proceedings in  
6 each case, in lieu of the taking of stenographic notes thereof.
- 7 2. The following courts shall be excluded from using mechanical  
8 recording of testimony:
- 9 (a) New York city supreme courts civil term;  
10 (b) New York city supreme courts criminal term;  
11 (c) New York state supreme courts outside the city of New York;  
12 (d) New York county courts;  
13 (e) New York state district courts, criminal and civil jury trials;  
14 (f) New York state family courts, delinquency cases;  
15 (g) New York city civil courts, jury trials.
- 16 3. In the event there is no viable eligible list of stenotype court  
17 reporters from which to canvass, then an employment announcement shall

18 be issued to fill the position on a provisional or per diem basis. Only  
 19 then, when such remedies are exhausted and no stenotype court reporters  
 20 are available, may mechanical recording of testimony be used.  
 21 4. The chief administrator of the courts shall submit a report to the  
 22 legislature no later than March thirty-first, two thousand nine and  
 23 annually thereafter. Such annual report to the legislature shall  
 24 include: the types of trial court proceedings in which mechanical  
 25 recording is used throughout the unified court system; an audit of all  
 26 electronic recording transcribers; and all purchases and leases of elec-  
 27 tronic recording equipment that shall be used to record all judicial  
 28 proceedings.  
 29 § 2. This act shall take effect immediately.

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

LBD16117-02-8

## SPONSORS MEMO:

### NEW YORK STATE SENATE INTRODUCER'S MEMORANDUM IN SUPPORT submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7995

SPONSOR: DEFRANCISCO

#### TITLE OF BILL:

An act to amend the judiciary law, in relation to mechanical recording  
 of testimony

#### PURPOSE:

The purpose of this bill is to provide for the use of mechanical record-  
 ing of testimony in those courts of the State of New York where it is  
 most effective.

#### SUMMARY OF PROVISIONS:

This bill authorizes the Chief Administrator of the Courts to direct the  
 use of mechanical recording of testimony and of other proceedings in the  
 courts of this State, in lieu of the taking of stenographic notes.  
 However, it excludes the following courts from using mechanical record-  
 ing of testimony: a) NYC Supreme Courts Civil Term; b) NYC Supreme  
 Courts Criminal Term; c) NYS Supreme Courts outside the City of New  
 York; d) New York County Courts; e) NYS District Courts Criminal and  
 Civil Jury Trials; f) NYS Family Courts, delinquency cases; and g) NYC  
 Civil Courts Jury Trials.

The bill further provides that in the event there is no viable eligible  
 list of stenotype court reporters from which to canvas, then an employ-  
 ment announcement shall be issued to fill the position on a provisional  
 or per diem basis. Only when such remedies are exhausted and no steno-

type court reporters are available may mechanical recording of testimony be used.

Lastly the bill requires the Chief Administrator of the Courts to report to the Legislature by March 31, 2009 and annually thereafter as to the usage of mechanical recording in the courts during the prior year.

**EXISTING LAW:**

**JUSTIFICATION:**

This legislation is proposed to ensure the accuracy of court records for the benefit of the litigants, the courts and the public at large. An accurate record of what occurs in a court proceeding is essential to achieving the goal of a just and fair result. The preparation of an accurate record supports the integrity of the process and leads to greater confidence by the public in the court system. This bill would limit the use of mechanical recording in certain courts. It would also authorize the Chief Administrator of the Courts to annually report on the use of mechanical recordings annually to the Legislature so that any issues pertaining to the use of mechanical recording can be addressed expeditiously.

**LEGISLATIVE HISTORY:**

New Bill.

**FISCAL IMPLICATIONS:**

Undetermined.

**LOCAL FISCAL IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

Immediately.

# New York Law Journal

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## Senate Bill Would Limit OCA's Use of Court Recording Devices

Joel Stashenko

05-19-2008

ALBANY - Legislation being carried by the chairman of the state Senate's Judiciary Committee would set limits on the Office of Court Administration's now unfettered authority to allow the mechanical recording of proceedings in any state courts in New York.

The measure, S7995, would prohibit the use of recording devices - rather than a stenographic record taken by a court reporter - in Supreme Court, County Court, District Court, Family Court when delinquency cases are being heard and during jury trials in New York City Civil Court.

If no OCA-employed court reporter is available, courts are directed to hire stenographers on a provisional or per-diem basis to take down proceedings in the specified courts. It is only in the event that no such reporters can be found that mechanical recording would be allowed under the new legislation.

The bill cleared Senator John A. DeFrancisco's committee last week, though the Syracuse Republican said in an interview Friday he expects it will be amended to spell out under what circumstances mechanical recording would be allowed rather than enumerating the longer list of courts where it is not to be used. Mr. DeFrancisco said that would simplify the wording of the legislation.

The bill is in response to complaints Mr. DeFrancisco said he has received about the quality of the transcripts generated by electronic recordings, mostly in Family and Surrogate's courts, but also in some criminal courts.

Mr. DeFrancisco said he has seen transcripts of electronically recorded testimony that are "simply not understandable in parts." Typically, the audio tape of a proceeding is sent to a

service to be transcribed by stenographers who were not in court.

"You might have seen trials where people talk at the same time," said Mr. DeFrancisco, a litigator. "I don't know how a recording is going to be unraveled by a transcriber as to who said what and also the total amount said by each person. That is why stenographers are there."

Mr. DeFrancisco said court reporters themselves sometimes send him copies of poor transcripts made from electronic recordings. He said his legislation has the backing of unions representing OCA court reporters, including the 410-member Association of Surrogate's and Supreme Court Reporters within New York City.

Brian DiGioranna, the president of the association, declined comment on the bill, citing the evolving nature of the legislation.

OCA had faced limitations on the use of recording devices similar to those in Mr. DeFrancisco's bill until about a decade ago, when the last in a series of one- or two-year extenders expired. That left the agency complete discretion on whether to use electronic recording.

Chief Administrative Judge Ann Pfau said the use of electronic recording has evolved according to where it is needed most. That is also where court reporters are hardest to find, she said.

"We certainly have no plans to expand it," she said Friday. "The reality also is that there are certainly specific areas and specific occasions where court reporters aren't available so courts turn in an appropriate way to electronic recording. But our general principle is that we have no plans to expand it."

Electronic recordings are most common in Family Court cases not involving delinquency, Surrogate's Court, the Court of Claims and New York City Civil Court. While not used in Supreme Courts in New York City or Supreme and County courts on Long Island, it is used for some upstate proceedings in Supreme, County and City Court, according to OCA.

Judge Pfau said OCA was willing to discuss the restrictions in Mr. DeFrancisco's bill with the Legislature. OCA has generally resisted legislation that it views as interfering with its ability to administer the courts.

"It's an issue of operating the courts in a way that's the most responsible and appropriate and trying to best meet the needs of the litigants," Judge Pfau said. "We think that's something that the court system can manage and should manage."

### **Legislative Role**

Mr. DeFrancisco defended his bill and its intent to keep electronic recording out of some

courtrooms.

"The Legislature sets many rules pertaining to the courts," he said. "They set the amount of judges that are going to be available to the courts. I don't think it is improper at all that the Legislature finds that there are problems with mechanical recordings in criminal cases or delinquency cases in Family courts. We should be able to legislate in order to prevent some injustice that might occur."

Assemblywoman Helene Weinstein, the Brooklyn Democrat who chairs that body's Judiciary Committee, said Friday she shares many of Mr. DeFrancisco's concerns about recording court proceedings.

"My preference generally would be to have court stenographers," she said. "The reliability of the record really seems to be much better, particularly with multi-party cases where you see it transcribed [from the recording] as 'Woman No. 1' or 'Woman No. 2' without saying who they are. In some courts, there's a very strong need for the literal hands-on approach."

Ms. Weinstein said she would like to see OCA reach an understanding with court reporters and lawmakers over where electronic recording is appropriate and where it is not without imposing legal restrictions.

If those efforts fail, "then you can always do legislation," she said.

OCA has 996 court reporters, who all have civil service protection. Reporters hired for work in lower courts start at \$63,869 a year under the terms of the new tentative contracts OCA has reached with its unions and \$75,156 a year for reporters working in the higher courts.

The salary figures are somewhat misleading, however, because reporters also receive extra money for each transcript they turn over to the court and they are allowed to sell transcripts to the parties in cases, for an extra fee.

Mr. DeFrancisco's bill does not pertain to the 1,300 town and village courts. There, OCA is in the process of providing all justice courts with digital recording devices so there is a record of proceedings.

Lawrence K. Marks, OCA's administrative director, said all but a few dozen of the justice courts have received equipment.

Only a relative handful of town and village courts have stenographers recording their proceedings.

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