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Measure Targeting Misconduct by DAs Fails for Third Time

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ALBANY - A bill establishing a misconduct commission to monitor state district attorneys for unethical conduct has failed for a third year to win approval from the New York state Legislature.

The commission called for under [A1131/S24](#) would be patterned after the state Commission on Judicial Conduct, which has monitored the activities of state and local judges in New York for more than 35 years.

Lawmakers concluded their 2016 regular session without bringing the bill to create a Commission on Prosecutor Misconduct up for a vote. Sponsors said support for the idea is growing and one influential legislator is predicting its eventual passage.

The prosecutorial panel would have been empowered to investigate complaints of improprieties by district attorneys or assistant district attorneys, to bring formal misconduct charges against them and to levy punishments up to prosecutors' removal.

"For good reason, district attorneys across the state are unanimous in their opposition of the proposed CPC [Commission on Prosecutor Misconduct] law," the president of the state district attorney's association, Rockland County DA Thomas Zugibe, said in a statement Tuesday. "While its aims are laudatory, creating yet another layer of review is unnecessary. Moreover, it will impede the efficient administration of justice and adversely affect public safety by subjecting already busy prosecutors to investigations and hearings at the whim of a disgruntled defendant, victim, or other member of the public."

A contingent representing the District Attorneys' Association of New York State made an 11th-hour plea to legislators not to create a commission, arguing that numerous safeguards are already in place to deter prosecutors from behavior that violates defendants' rights, including oversight by trial judges, lawyer grievance panels and, for the district attorneys themselves, the electorate.

The Bronx's Darcel Clark, Oneida County's Scott McNamara and Albany County's P. David Soares spoke against the bill at a legislative forum in Albany on June 8 that also included proponents of the bill urging lawmakers to create the panel ([NYLJ, June 9](#)).

The legislation reached the calendars of the each chamber of the Legislature in the final days of its session, but neither house called it up for a vote.

The bill was sponsored by state Assemblyman N. Nick Perry, D-Brooklyn, and state Sen. John DeFrancisco, R-Syracuse.

During the June 8 forum, Assembly Codes Committee Chairman Joseph Lentol, D-Brooklyn, said the bill is gaining momentum and he predicted the eventual creation of a prosecutorial misconduct commission in New York.

"The time is right for us to take some action ... that I believe is fair and reasonable," Lentol said. "We will get to it. If it's not this year, it's next year, hopefully."

Another bill of interest to prosecutors also did not pass.

The legislation ([A10152/S7408](#)) would have allocated \$1.6 million to counties to cover the cost of the pay raises that district attorneys received on April 1 thanks to a recommendation by a state pay commission. By law, the salaries of district attorneys outside New York City are linked to what the Supreme Court or County Court judges in their counties receive so that when the judges get raises, the prosecutors do too.

The allocation bill was approved by the Senate, but died in committee in the Assembly.

Counties sought help in paying the additional salary costs for their district attorneys, though Gov. Andrew Cuomo's office had indicated little support for the bill following its introduction ([NYLJ, April 22](#)).

In other actions by the Legislature during the final days of the regular 2016 session:

- Appeals. The Legislature gave final approval to a bill ([A9522/S7246](#)) that would allow trial courts to grant poor-person status to a defendant following sentencing for a planned appeal. Sponsors said the trial judge is already in a good position to know the economic status of a defendant and that forcing defendants to make such poor-person applications to appeals courts as their appeals play out causes needless delays to the legal process and often results in mistakes in filings by pro se defendants.

The bill was recommended by the Advisory Committee on Criminal Law and Procedure of the courts.

- Digital accounts. The Legislature gave final passage to a bill ([A9910/S7604](#)) recommended by the Surrogate's Court Advisory Committee mandating that fiduciaries get full access to all financial accounts that they have legal power over, even those maintained digitally. Sponsors said some banks, investment houses and others holding accounts have put unnecessary hurdles in the way of people with power of attorney and other fiduciaries when they have sought to access accounts maintained electronically (NYLJ, Feb. 18).

- Jury Pools. Lawmakers gave final approval to a bill that would seek to broaden the pools of jurors called for trials in the four New York district courts.

The measure ([A9273/S7196](#)) would require that district courts get access to the same government lists that state courts use when calling jurors: registered voters, licensed drivers, New York State tax filers, unemployment insurance recipients and public assistance recipients. Currently federal courts only draw from the state-maintained lists of registered voters and licensed drivers.

- Juvenile Interrogations. A bill to require the audio/video recording of law enforcement interrogations of juveniles in delinquency proceedings in Family Court failed to make it to the floor in either legislative chamber. The measure ([A9770/S7082](#)) was recommended by the Family Court and Rules Advisory Committee.

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