

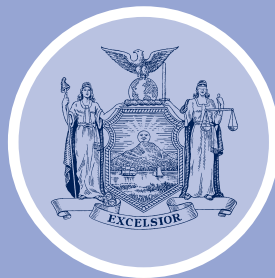


NEW YORK STATE ASSEMBLY

A N N U A L

2 0 1 2

R E P O R T



**Committee on
Judiciary**

Helene Weinstein, Chair

SHELDON SILVER, SPEAKER



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

HELENE E. WEINSTEIN
Assemblywoman 41ST District
Kings County

DISTRICT OFFICE
3520 Nostrand Avenue
Brooklyn, New York 11229
(718)648-4700

ALBANY OFFICE
Room 831
Legislative Office Building
Albany, New York 12248
(518)455-5462

CHAIR
JUDICIARY COMMITTEE

COMMITTEES
Aging
Codes
Rules
Ways and Means

Court Facilities Capital Review Board

December 15, 2012

The Honorable Sheldon Silver
Speaker of the Assembly
Room 932, Legislative Office Building
Albany, New York 12248

Re: **Annual Report of the Committee on Judiciary – 2012**

Dear Speaker Silver:

As Chair of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2012 Legislative Session.

The Annual Report is a review of the work of the Committee on Judiciary and highlights many of its major initiatives. It also includes a brief overview of various budgetary matters that concern the courts of the State and other areas within the Committee's purview.

I would like to acknowledge the hard work of the members of the Committee on Judiciary and all of the members of the Assembly for their continued commitment to its work and to progressive legislation. As always, your continued support is deeply appreciated.

Sincerely,

Helene Weinstein, Chair
Assembly Standing Committee on Judiciary

2012 ANNUAL REPORT

STANDING COMMITTEE ON JUDICIARY

Helene E. Weinstein, Chair

Committee Members

Majority

Edward Braunstein
Jeffrey Dinowitz
Hakeem Jeffries
Rory I. Lancman
Charles D. Lavine
Daniel J. O'Donnell
Dan Quart
Peter M. Rivera¹
Sean Ryan
Aravella Simotas
Michele R. Titus
David Weprin
Kenneth Zebrowski

Minority

Tom McKeivitt, Ranking Member
William A. Barclay
Philip Boyle
Al Graf
Sean Hanna
Tony Jordan
Michael Montesano

Staff

Dan Salvin, Assistant Secretary for Program & Policy
Richard Ancowitz, Counsel
Clayton Rivet, Team Counsel
Amy Maggs, Associate Counsel
Sarah Beaver, Committee Clerk
Nadia Gareeb, Counsel for Helene Weinstein

¹ Mr. Peter M. Rivera is no longer a member of the New York State Assembly. On June 20, 2012, he was confirmed to serve as the Commissioner of the Department of Labor.

TABLE OF CONTENTS

| | | |
|-------------|--|-----------|
| I. | Committee Responsibilities and Priorities | 4 |
| II. | Legislative Accomplishments | 5 |
| III. | Public Hearing | 10 |
| IV. | Judiciary Budget | 11 |

I. COMMITTEE RESPONSIBILITIES AND PRIORITIES

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over amendments to the State Constitution, Civil Practice Law and Rules, Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relations Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, and the Eminent Domain Procedure Law.

The Judiciary Committee works closely with other committees of the Assembly, including the committees on Rules and Codes, and the Ways and Means Committee with which the Judiciary Committee shares budgetary oversight of the Office of Court Administration and the Department of Law. All committees in the Legislature report proposed constitutional amendments to the Judiciary Committee.

A top priority of the Committee each year is ensuring that funding is added to the state budget for civil legal services for low-income New Yorkers. In light of the ongoing devastating impact of the economic crisis on already diminished funding resources for civil legal services and the rising unmet need for civil legal services, the Judiciary Committee remained a strong advocate for funding of civil legal services. The enacted Judiciary budget for State Fiscal Year 2012-13 included a \$25 million appropriation for civil legal services and a continued \$15 million allocation to the New York Interest on Lawyer's Account (IOLA) fund, a significant source of funding for civil legal services, to make up for the dramatic loss in revenues for the fund over the past few years. The impact of Hurricane Sandy has enhanced the critical need for civil legal services.

The Judiciary Committee tackled many high profile issues in 2012, including mortgage foreclosure reform, authorizing funding for foreclosure prevention services, consumer protection, responding to the needs of families, allowing for the filing of litigation by electronic means, and trusts and estates matters.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2012.

II. LEGISLATIVE ACCOMPLISHMENTS²

A. PROTECTING CHILDREN AND FAMILIES

1. Expanding New York law on adoption - Chapter 395 – A.10179A [Lavine]/S.7548 [Saland].

To provide the same benefits to children adopted from countries that have adopted the Hague Convention as the benefits available to children adopted from non-Hague countries, this provision expands New York law to recognize IH-3 visas.

2. Expanding the authority of support magistrates – Chapter 468 – A.10345 [O'Donnell]/S.7579 [Gallivan].

This law expands the authority of Support Magistrates by authorizing them to preside over hearings which challenge the suspension of a driver's license for a failure to pay child support.

3. Clarifying probation decisions in child support, delinquency, persons in need of supervision and family offense proceedings – Chapter 470 – A.10415 [Weinstein]/S.7589A [Savino].

By limiting changes made in 2011 relating to probation supervision transfer in Family Court cases to juvenile delinquency and persons in need of supervision cases, this law ameliorates the unintended consequences of changes made by Chapter 97 of the Laws of 2011.

The following bill was passed by the Assembly only:

4. Adjournments in contemplation of dismissal and suspended judgments in child protective proceedings –A.7639 [Weinstein].

This bill clarifies and expands options for resolution of child protective cases via adjournment in contemplation of dismissal and also clarifies the procedures for and consequences of dispositional alternatives in these cases.

B. PROTECTING VICTIMS OF DOMESTIC VIOLENCE

1. Extending referee authority to adjudicate orders of protection - Chapter 137 – A.9400 [Weinstein]/S.6624 [Bonacic].

This legislation extends for an additional two years, the current authority of referees in family court to adjudicate petitions for orders of protection requested ex parte and those issued on default.

² All references to chapters, except where otherwise noted, are to chapters of the laws of 2012.

The following bills were passed by the Assembly only:

2. **Limiting the scope of information in published name change notices –A.5720 [Meng]/S.5398 [Golden].**

To help address the increasing problem of identity theft, this measure limits the amount of information that must be published for a name change notice.

3. **Translating orders of protection – Passed Assembly - A.6113A [Weinstein]/S.1870A [Espaillat].**

This bill sets forth the requirements for translating orders of protection into the appropriate language to help parties that are hearing impaired or have limited English proficiency to better understand the essential terms of an order of protection as outlined by the court.

C. **CIVIL PRACTICE**³

1. **Electronic filing of legal papers (e-filing) – Chapter 184 – A.10706 [Weinstein]/S.7592A [Saland].**

This law expands the use of e-filing to include the consensual use of e-filing for the commencement and exchange of papers in Criminal cases in Supreme Court and County Court, and in abuse and neglect and juvenile delinquency cases in Family Court, at the direction of the chief administrative judge. The chief administrative judge is authorized to make this expansion mandatory in up to six counties of her choosing, conditioned upon prior consent of local stake holders, while also preserving safeguards for pro-se litigants who will be exempt from the mandate with the ability to opt in.

2. **Electronic funds transfers – Chapter 399 – A.10591 [Robinson]/S.7493A [Griffo].**

The Dodd-Frank law enacted by Congress enhanced consumer protections in the federal Electronic Fund Transfer Act (EFTA) for certain electronic funds transfers, but created some uncertainty about the application of the legal principles to private-sector funds-transfer systems. This law addresses the uncertainty by clarifying the relationship between Article 4A of the Uniform Commercial Code and the federal EFTA.

3. **Expansion of attorney liens – Chapter 478 – A.5275 [Titone]/S.1546 [Sampson].**

Attorneys can attach liens to proceeds resulting from a court judgment. This law will permit an attorney to attach a lien to proceeds resulting from Alternative Dispute Resolution proceedings and settlements.

³ In addition to the Assembly Judiciary Committee, Civil Practice related bills are also reported from the Assembly Codes Committee.

4. Making the unauthorized practice of law a felony – Chapter 492 - A.5700A [Braunstein]/S.1998A [Fuschillo].

The increasing prevalence of non-lawyers holding themselves out as attorneys has done a great deal of harm through their mistaken advice, particularly to immigrants. This law will increase the penalty for the unauthorized practice of law to a Class E felony.

5. Making notice of claim filings uniform – Chapter 500 - A10657A [Weinstein]/S.7641B [Martins].

A notice of claim is typically required for persons to be able to institute legal proceedings against governmental and quasi-governmental entities in New York State. Existing laws are confusing in this area, and it is easy for prospective claimants to miss important filing deadlines. This law will standardize the process by allowing these claims to be filed through the office of the New York State Department of State.

D. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS

1. Private transfer fee obligations – Chapter 386 of the Laws of 2012 – A.9390B [Morelle]/S.6522B [Libous].

The law enacted last year to outlaw private transfer fee obligations which are required payments that run with the land and must be paid by all buyers to the original seller is amended to clarify that New York's ban on private transfer fee obligations does not apply to certain charges accessed under the Private Housing Finance Law or General Municipal Law.

The following bill passed the Assembly only:

2. Foreclosure Reform –A.10395 [Weinstein]/S.7571 [Rules]

To ensure the integrity of residential mortgage foreclosure actions, this measure would create a procedure requiring plaintiff lender's attorneys in these cases to attest, at the time of filing the action, that there is a reasonable basis for the commencement of the action, and would require them to attach the mortgage, note, and proof of ownership of the loan. By also clarifying that foreclosure plaintiffs must file proof of service within 20 days of service, this bill would ensure timely participation in mandatory settlement conferences held by the court to help avoid home loss.

E. TRUSTS AND ESTATES AND GUARDIANSHIPS

1. Improving information for judges in article 81 proceedings – Chapter 475 – A.10608A [Weinstein]/S.7587B [McDonald].

This law gives judges presiding in Mental Health Law Article 81 proceedings greater information bearing on the fitness of guardians and potential guardians, consistent with information provided judges in custody and visitation proceedings.

2. Family Benefit Exemptions – Chapter 123 - A.8344-A [Weinstein]/S.6657 [Bonacic].

The Estates, Powers and Trusts Law provides that, when a person dies leaving a surviving spouse or children under 21, certain property belonging to the decedent must be exempted from his or her estate assets and, instead, be provided for the benefit of the decedent's family. This law clarifies that marketable securities, such as stocks, are included within the list of items considered family benefit exemptions and not included as assets of the estate.

3. Protection of Estate Assets – Chapter 450 - A.8604-B [Rosenthal]/S.4988-B [Little].

This law will prevent consignees from misusing artwork left in their care by requiring a consignee, such as an art merchant or owner of an art gallery, to safeguard as a fiduciary the art work displayed for sale. This law also provides increased protections for the heirs of a consignor – the artist - by extending such protections to the artist's beneficiaries after their death.

4. Guardianship Succession Procedures – Chapter 294 – A.9836 [Abinanti]/S.06977 [Hannon].

To address the increasingly common problem where Article 17-A standby guardians fail to step in after the death, renunciation or incapacity of the primary guardian, leaving developmentally disabled persons without a guardian to act on their behalf, this law establishes procedures that would ensure that disabled individuals have a replacement guardian appointed as soon as possible to safeguard their needs..

5. Public Administrators – Chapter 142 – A.9508-A [Ryan]/S.06653-A [Bonacic].

To reduce the cost burden of a judicial accounting on small estates, where the accounting often includes the cost of publication and the associated fee of a guardian ad litem, this law amends the Surrogate's Court Procedure Act (SCPA) to permit the settlement of small estates by filing an accounting where the gross value of the assets accounted for does not exceed the monetary amount defined as a small estate under the SCPA.

The following bills passed the Assembly only:

6. Interest on a Legacy – A.10047-A [Weinstein]/S.7228-A [Bonacic]

This bill would change the interest rate paid on delayed monetary legacies from the statutory rate of six percent, to an interest rate based on the Federal Funds Rate, thereby compensating the beneficiary according to the time value of money for the delay in payment of their legacy.

7. Article 81 Guardians – A.3486 [Titus]

This bill would exempt certain guardianship motions filed under article 81 of the mental hygiene law from the filing fee required to be paid to the county clerk.

F. OTHER LEGISLATION OF INTEREST

1. Civil service credits for disabled veterans – First Passage⁴ - A.2088 [Thiele]/S.1311 [Lavelle].

This Constitutional amendment would grant disabled veterans additional civil service points.

2. Independent redistricting commission – First Passage – A.9526 [Silver]/S.6698 [Skelos].

This Constitutional amendment would establish an independent redistricting commission.

3. Real estate salesperson licenses – Chapter 345 - A.9996A [Zebrowski]/S.6988A [O'Mara].

Real estate salespersons needed the cooperation of their previous employer in order to transfer their license to their new employer. This law will make such transfers easier and end the need to contact their former employer.

4. Justices in the towns of Lodi and Ovid – Chapter 86 – A.10083 [Kolb]/S.7291 [Nozzolio].

This law would permit the towns of Lodi and Ovid to elect a single town justice.

⁴ Amendments to the Constitution must be passed by the Legislature in two consecutive sessions before being presented to the voters for approval.

III. PUBLIC HEARING

December 5, 2012 hearing on economic abuse as a form of domestic abuse

On December 5, 2012, the Committees on Judiciary and Codes held a public hearing to examine the problem of economic abuse as a form of domestic abuse.

Testimony from the Office of Court Administration, various civil legal service providers, domestic violence prevention advocates and related shelter providers outlined how economic abuse is a pervasive form of domestic abuse and should be so recognized under the law. Witnesses shared that economic abuse in the family violence context involves commonly used tactics by abusers to exercise power and control over their victims and their finances that either prevent the victim from leaving a dangerous relationship or force them to return to it. Economic abuse, they testified, takes many forms including taking money, wages, credit cards and property from the survivor without permission; incurring debt in the survivor's name through false statements or coercion; perpetrating identity theft or otherwise incurring debt without the survivor's knowledge, damaging her credit and score with resulting long-term effects on job prospects and housing; keeping bank accounts in the abuser's name and refusing the survivor access to them; forbidding the survivor from earning money or continuing education; prohibiting access to the family car thereby preventing access to work and resources for safety; monitoring the survivor's computer access; harassing the survivor at work jeopardizing her job; hiding assets and income; refusing to pay child or spousal support; dissipating marital assets; withholding immigration relief and threatening to report the survivor to immigration services. Witnesses emphasized the profound, long-term and dangerous effects of these tactics, including being forced to stay in, or return to the abusive relationship for a multitude of reasons directly related to the economic abuse perpetrated by the abuser.

Testimony at the hearing highlighted the importance of increased access to civil legal services for victims in an array of civil matters including in all aspects of matrimonial, family law and consumer matters so that survivors are better equipped to exercise rights under existing laws; greater access to residential and non-residential services for victims; increased access to child care and subsidized supervised visitation centers to reduce the risk in child visitation cases; and enhanced access to a range of other services including credit and debt counseling, jobs and life skills training and educational grants. Witnesses emphasized the ongoing and critical need for increased funding to help support these essential services, including Temporary Assistance to Needy Families (TANF) and civil legal services funding allocations.

Witnesses emphasized the importance of cross-sector training on economic abuse as a form of domestic abuse for judges, court personnel and service providers, including training to better identify and recognize such abuse and to have appropriate responses that are focused on victim safety and economic self-sufficiency.

In addition to urging reforms to the judicial process aimed at providing greater protections to survivors of economic abuse and suggestions for the Judiciary to better utilize existing laws, witnesses also outlined legislative changes to better recognize economic abuse as a form of domestic abuse. These include enhancements to consumer protection laws generally and more specifically for domestic violence survivors, and changes to family and domestic relations laws including those pertaining to family offense actions.

IV. NEW YORK STATE'S JUDICIARY BUDGET

On January 30, 2012, at a joint legislative hearing in the matter of the 2012-2013 Executive Budget on Public Protection before the New York State Senate Finance and Assembly Ways and Means Committees, the Office of Court Administration's (OCA) discussed the 2012-13 Judiciary Budget request.

At the hearing, Honorable A. Gail Prudenti, Chief Administrative Judge of the Office of Court Administration, emphasized the need to balance austerity measures in the face of the State's fiscal crisis, and the continuing need for resources necessary to address the immense and increasing workload of the New York courts. Judge Prudenti also outlined the negative-growth Judiciary budget and a broad range of cost-cutting measures and efficiency improvements, and answered questions relating to the proposed Judiciary budget. Additionally, in her testimony Judge Prudenti emphasized the need for free legal representation in certain civil legal matters to ensure fair and equal access to justice to the most vulnerable New Yorkers and highlighted the cost savings and efficiencies resulting from increased legal representation in civil matters.

The enacted Judiciary budget for State Fiscal Year (SFY) 2012-13 included a \$25 million appropriation to support the recommendations of the Chief Judge's Task Force on Civil Legal Services, and continued a \$15 million sub-allocation to the Interest on Lawyers Account (IOLA) fund in support of civil legal service programs.

2012 SUMMARY SHEET

SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON

Judiciary

| FINAL ACTION | ASSEMBLY BILLS | SENATE BILLS | TOTAL BILLS |
|---|-------------------|-----------------|----------------|
| BILLS REPORTED WITH OR WITHOUT AMENDMENT | | | |
| TO FLOOR; NOT RETURNING TO COMMITTEE (FAVORABLE) | 16 | | 16 |
| TO WAYS AND MEANS | 8 | | 8 |
| TO CODES | 18 | | 18 |
| TO RULES | 12 | | 12 |
| TO JUDICIARY | 0 | | 0 |
| TOTAL | 54 | | 54 |
| BILLS HAVING COMMITTEE REFERENCE CHANGED | | | |
| TO _____ | 0 | | 0 |
| TO _____ | | | 0 |
| TO _____ | | | 0 |
| TO _____ | | | 0 |
| TOTAL | 0 | | 0 |
| SENATE BILLS SUBSTITUTED OR RECALLED | | | |
| SUBSTITUTED | | 6 | 6 |
| RECALLED | | 1 | 1 |
| TOTAL | | 7 | 7 |
| BILLS DEFEATED IN COMMITTEE | 0 | 0 | 0 |
| BILLS HELD FOR CONSIDERATION WITH A ROLL-CALL VOTE | 69 | 0 | 69 |
| BILLS NEVER REPORTED, DIED IN COMMITTEE | 262 | 30 | 292 |
| BILLS HAVING ENACTING CLAUSES STRICKEN | 7 | 0 | 7 |
| MOTIONS TO DISCHARGE LOST | 0 | | 0 |
| TOTAL BILLS IN COMMITTEE | 392 | 37 | 429 |
| TOTAL NUMBER OF COMMITTEE MEETINGS HELD | | 11 | |

DISTRIBUTION: Clerk of the Assembly (1), Program & Committee Staff Library (1), Committee File (1), Speaker's Counsel (1).