



New York State Assembly

Carl E. Heastie, Speaker

ANNUAL REPORT 2015

A dark blue silhouette of a city skyline, including various skyscrapers and buildings, positioned behind the large white text of the title.

Committee on

Judiciary

Helene Weinstein, Chairperson



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STATE OF NEW YORK
ALBANY

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COMMITTEES
Aging
Codes
Rules
Ways and Means

Court Facilities Capital Review Board

December 15, 2015

The Honorable Carl E. Heastie
Speaker of the Assembly
Room 932, Legislative Office Building
Albany, New York 12248

Re: Annual Report of the Committee on Judiciary – 2015

Dear Speaker Heastie:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Committee's Annual Report for the 2015 Legislative Session.

The Annual Report reviews 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.

The Judiciary Committee tackled many high profile issues in 2015, including reform of spousal maintenance laws and interstate child support, protections for domestic violence victims and children, free speech safeguards, and protections for the elderly and disabled, many of which are expected to be enacted into law.

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. The Judiciary Committee remains a strong advocate for providing civil legal services to those in need. This year, the Assembly continued its support for civil legal services in New York State by restoring its traditional funding and increasing its appropriation for civil legal services through the Judiciary budget.

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, Chairperson
Assembly Standing Committee on Judiciary

**2015 ANNUAL REPORT
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON JUDICIARY**

Helene E. Weinstein, Chair

MEMBERS OF THE STANDING COMMITTEE

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Phillip Steck
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Andrew Goodell
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Staff

Daniel Salvin, Assistant Secretary for Program & Policy
Richard Ancowitz, Counsel
Amy Maggs, Associate Counsel
Justin Birzon, Associate Counsel
Sarah Beaver, Committee Clerk
Nadia Gareeb, Counsel for Helene Weinstein

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I. COMMITTEE JURISDICTION

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, Eminent Domain Procedure Law and Indian Law. The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2015.

II. LEGISLATIVE ACCOMPLISHMENTS¹

A. FAMILY AND MATRIMONIAL PRACTICE, AND PROTECTIONS FOR DOMESTIC VIOLENCE VICTIMS, CHILDREN AND FAMILIES

1. Improving consistency in maintenance and spousal support orders – Chapter 269-A.7645 [Weinstein]/S.5678 [Bonacic].

To facilitate predictability and fair outcomes in awarding critical remedies for many divorcing spouses, this law builds on the interim maintenance reform law of 2010, and introduces guidelines to determine the amount and duration for post-divorce maintenance.

2. Maintain compliance with the Uniform Interstate Family Support Act – Chapter 347 - A.7636B[Weinstein]/S.05685-B[Bonacic]

This law ensures that New York remains in compliance with federal requirements and adopts certain changes to the Uniform Interstate Family Support Act (UIFSA) that provide a roadmap for interstate and foreign child support orders.

3. Clarifying that spousal maintenance constitutes income to the payee for purposes of calculating child support – Chapter 387 - A.7637 [Seawright]/S.5691 [Bonacic].

This law clarifies that spousal maintenance actually paid or to be paid is considered income to the payee and is deducted from the payor's income for purposes of calculating child support, so long as the order or agreement for such maintenance endures.

4. Remote petitioning for temporary orders of protection. - Chapter 367 - A.6262 [Joyner]/S.6 [Young].

This law would allow for the development and establishment of a pilot program in family courts for the remote petitioning and issuance by audiovisual means of temporary orders of protection. The measure will provide victims of domestic violence with a safer and more accessible avenue for obtaining a temporary order of protection.

5. Allowing pro se litigants to apply for counsel fees and expenses in matrimonial actions – Chapter 447 - A.7221[Weinstein]/S.5190[Bonacic].

This measure would exempt indigent pro se litigants from having to provide detailed fee arrangement information when making an application for counsel fees in matrimonial actions.

¹ All references to chapters, except where otherwise noted, are to chapters of the laws of 2015.

The following bills are awaiting Executive action.

6. Enabling greater involvement of relatives in cases involving child abuse or neglect - A.6715A [Weinstein]/S.5018A [Felder]

If enacted, this measure would enable greater notice to and participation by non-respondent parents and relatives in child protective proceedings, while simultaneously streamlining custody procedures.

The following bills were passed by the Assembly only.

7. Providing translation services regarding orders of protection - A.162 [Weinstein]/S.1788[Espaillet].

This measure sets forth the requirements for interpreting 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.

8. Safeguarding and expanding legal remedies for victims of domestic - A.7037 [Zebrowski]/S.4902[Stavisky].

This measure recognizes the unique nature of acts of domestic violence and allows victims additional time to press their claims in court. In most cases, this would expand the statute of limitations from one to two years.

9. Providing equal adoption rights where the petitioner's parentage is legally-recognized A.23[Paulin]/S.3485[Lanza].

This legislation provides that a second parent's petition to adopt, where the petitioner's parentage is legally-recognized under New York State law (e.g. via marriage), shall not be denied solely on the basis that the petitioner's parentage is already legally-recognized.

The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.

10. Protecting due process rights of parents in custody cases - A. 290 [Weinstein].

This measure provides for uniform access to court-ordered forensic mental health evaluation reports and underlying data by litigants, addressing longstanding due process concerns relating to limited access to information that has significant bearing on parental rights to their children.

11. Removing restraints on children in family court - A.7879 [Gantt].

This legislation establishes a presumption prohibiting the use of physical restraints on youth under the age of 21 in family court, unless the court determines, after a hearing, that restraints are necessary under certain limited circumstances.

B. CIVIL PRACTICE²

1. Allowing annuity issuers to waive fees for families of victims of terrorist attacks – Chapter 361 - A.2026 [Ryan]/S.2152 [Kennedy].

This law allows annuity issuers pursuant to a court-approved structured settlement the ability to waive their fees, which are typically built into the cost of the annuity which funds the structured settlement, for the victims of terrorist attacks.

2. Requiring the Department of Law to file annual reports of awards pursuant to the New York state equal access to justice act Chapter 439 - A.6079 [Simon]/S.5899 [Bonacic].

This measure would require the Department of Law to file annual reports of awards pursuant to the New York state equal access to justice act.

The following bills are awaiting Executive action.

3. Ensuring that pre-trial summary determinations are done based upon all available evidence - A.6265 [Kaminsky]/S.5188[Bonacic].

If enacted, this measure would require that determinations of summary motions be based upon *all* expert testimony available, and not just expert testimony affidavits previously exchanged.

4. Expanding the manner and time frames within which service by mailing may be made both within and without the state - A.6264 [Simotas]/S.4845 [Bonacic].

If enacted, this measure would allow service by mail upon an attorney from outside the State of New York. This measure also extends the prescribed period of time for response to such papers when they are served by mail from outside the State but within the geographic boundaries of the United States.

The following bills passed the Assembly only.

5. Allowing appellate review of certain orders or applications - A.7552 [Brennan].

This bill resolves ambiguity by clarifying that the Appellate Division and the Appellate Term are expressly permitted to review certain applications which, by their nature, do not have any adverse party on which notice can be served.

6. Granting New York State court jurisdiction over foreign business entities doing business within New York State - A.6714 [Weinstein]/S.4846 [Bonacic].

This bill provides that the granting of a foreign business entity's application for authority to do business in this state constitutes consent to jurisdiction by the courts of this state.

² In addition to the Assembly Judiciary Committee, Civil Practice related bills are also reported from the Assembly Codes Committee.

7. Providing innocent farmers an affirmative defense - A.298 [Abinanti]/S.3085 [Young].

This legislation permits farmers an affirmative defense against patent infringement suits which assert that the farmer is using seed with patented traits. The affirmative defense would permit the farmer to defend such suits by showing that they did not knowingly introduce such patented seed onto their property.

8. Establishing time restrictions to remove or remedy dangerous housing conditions – A.406 [Dinowitz]/S.1309 [Peralta].

This measure sets a 60 day limit on the time within which a property owner must remedy a dangerous building violation, by requiring landlords to make necessary repairs in a timely fashion or risk losing control over the property.

9. Awarding attorney fees and expert witness fees in appropriate housing discrimination cases – A.1998 [Dinowitz].

This measure broadens the scope of New York State’s Human Rights law by allowing attorney’s fees and expert witness fees to be awarded in *all* appropriate cases of discrimination.

10. Providing state and federal consistency regarding the admissibility of an opposing party’s statement – A.7320 [Weinstein].

This legislation renders admissible the statement of a party’s agent or employee, provided that the statement was on a matter within the scope of that employment or agency relationship, and made during the existence of the relationship. This measure follows the approach of Federal Rules of Evidence.

C. COURT OPERATIONS AND ADMINISTRATION OF JUSTICE

1. Expanding E-filing in civil and criminal court - Chapter 237, A.8083 [Weinstein]/S.5833 [Bonacic].

This law authorizes expansion of electronic filing in various courts, which has largely proven to be a success, saving time and money for both litigants and the courts. This measure is responsive to the input of the bar, the courts, and the county clerks to help ensure that the impact on the rights of litigants, and in particular unrepresented litigants and on their access to the courts, is given due consideration.

2. Protecting personal safety in name change publications - Chapter 241 – A.2242[Bronson]/S.5240 [Savino].

Responding to concerns about personal safety, this law amends the publication requirement in certain circumstances by limiting the amount of information that must be published in order to finalize a name change.

3. Aiding deaf and hard of hearing persons in court – Chapter 272 –A.7939A [Weinstein]/S.5533B[Defrancisco]

This law allows court reporters to provide instantaneous translation of everything that is spoken in the court room, via a real-time feed, which can be displayed on a computer or monitor in court for convenient viewing. This measure represents a major step forward in the use of technology to protect the rights of deaf and hard of hearing persons.

The following bills passed the Assembly only.

4. Protecting incapacitated persons from unjust collection practices – A.6510A [Weinstein]/S.4642-A [Golden].

This measure would prevent the misuse of guardianship proceedings for the primary purpose of collecting bills and would thereby put an end to a disturbing practice by some nursing homes.

5. Protecting citizens from frivolous litigation that is intended to silence their exercise of the rights of free speech and petition about matters of public concern - A.258 [Weinstein]/S.1638 [Espaillat].

This measure expands current protections for persons faced with abusive litigation filed by parties who object to a citizen's participation in matters of public concern. It also requires the award of costs and attorney fees in frivolous actions against citizens in such cases.

6. Streamlining the procedure surrounding service of subpoena and delivery of records – A.7057 [Titone]/S.5621 [Bonacic].

The measure would allow a subpoena duces tecum to be made returnable to the attorney or self-represented party who originally served them. This bill avoids the burdensome requirement of having to examine subpoenaed records within the busy confines of the attorney record room in the Courthouse.

The following bill was reported by the Assembly Judiciary Committee and was pending at the conclusion of session.

7. Establishing a commission on prosecutorial misconduct – A.1131 [Perry]/S.24 [Defrancisco].

This legislation establishes a Commission on Prosecutorial Misconduct, and grants the Commission powers to take complaints from the public, investigate, and issue determinations regarding prosecutorial misconduct.

D. PROTECTING CONSUMERS, TENANTS, AND HOMEOWNERS

The following bills passed the Assembly only.

1. Protects the right of tenants to call police or emergency assistance – A.1322 [Lavine]/S.4955 [Robach].

This legislation prevents local nuisance ordinances from directly or indirectly jeopardizing the housing of victims of domestic violence simply for accessing police or emergency assistance. In doing so, the legislature seeks to bring a measure of stability to the lives of crime victims.

2. Enhancing protections and disclosures required in consumer contracts - A.1152 [Dinowitz]/S.3135 [Martins].

This legislation requires plain language to be used in certain consumer contracts involving transactions valued at \$250,000 or less.

3. Relates to providing recourse for manufactured homeowners – A.6269 [Thiele]/S.4436 [Lavalle].

This bill permits manufactured homeowners to challenge unjustified rent increases by manufactured home parks.

The following bills were reported by the Assembly Judiciary Committee and were pending at the conclusion of session.

4. Creating the Consumer Credit Fairness Act – A.4438 [Weinstein].

This longstanding proposal of the Assembly, submitted this year by the NYS Attorney General, would reform abusive litigation practices concerning consumer debt collection. This reform measure includes requiring creditors to submit proof of their claims prior to being able to obtain a default judgment. It also curtails the right to collect consumer debts upon expiration of the statute of limitations, which is reduced from six to three years in the measure.

5. Protecting workers from employers who illegally withhold wages - A.5501A [Rosenthal]/S.2232C [Peralta].

The Securing Wages Earned Against Theft (SWEAT) Act, ensures that assets of the employer will be available to compensate wage theft victims who obtain judgment against their employers, thereby increasing the likelihood of recovery.

6. Mandating settlement conferences in foreclosure cases- A.1298 [Weinstein]/S.5242 [Savino].

This measure sets forth the rights and remedies of the parties to a mortgage foreclosure action to ensure compliance with the settlement conference law and its original design, to facilitate settlements of these actions.

7. Ensuring protections in improper debt collection cases - A.4619 [Simotas]/S.2444 [Gianaris].

Currently, citizens are not permitted to sue debt collectors for violating state law during collection efforts. This legislation would allow private citizens to enforce their own rights, where the government either cannot or will not do so.

8. Combating abandoned Properties - A.6932 [Weinstein]/S.4781 [Klein].

This legislation, advanced by the Office of the New York State Attorney General, would require lenders to maintain, before and during the foreclosure process, residential properties that are vacant and abandoned. It would also create a state registry of such properties to help with their early identification and maintenance and would provide financial resources to localities to facilitate compliance.

9. Defense of Standing – A.247 [Weinstein]/S.5241 [Savino].

This homeowner protection measure would ensure that only legally entitled parties are able to bring foreclosure suits against homeowners, and would preserve homeowners' related defenses.

E. TRUSTS AND ESTATES AND GUARDIANSHIPS

1. Making a technical correction relating to notice of petition for the appointment of a guardian for purposes of property management – Chapter 243 - A.490 [Ryan]/S.4179 [Ortt].

This law makes a technical correction relating to the notice of petition for the appointment of a guardian for purposes of property management.

2. Clarifying the Uniform Guardianship Act – Chapter 458 - A.7596 [Weinstein]/S.5482 [Hannon].

This bill would make a much needed chapter amendment to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) to clarify the right of guardians appointed in other states to appear in New York Courts and dispose of real estate.

3. Ensuring equal protection for children conceived after the death of a parent – Chapter 438 - A.6024A[Weinstein]/S.5160 [Bonacic].

If enacted, this measure would establish the commencement date for payment of a legacy with interest to a genetic posthumous child of a decedent entitled to inherit under the Estates Powers and Trusts Law.

4. Clarifying requirements for a fiduciary to recant a decanting Chapter 441 - A6263 [Braunstein]/S.5191 [Bonacic].

If enacted, this measure would create a roadmap for the trustee to follow in the event that it is necessary to revoke a decanting during the thirty day period before the decanting takes effect.

The following bills passed the Assembly only.

5. Enhancing the privilege and protections between a personal representative and the attorney to lifetime trustees - A.7868 [Weinstein].

This measure includes lifetime trustees in the definition of fiduciaries to whom the attorney-client privilege applies.

6. Exempting certain guardianship motions filed under article 81 of the Mental Hygiene Law from the filing fee required to be paid to the county clerk – A.3221 [Titus].

This legislation exempts principals involved in guardianship cases from the \$45.00 filing fee for civil motions, thus encouraging representation in these matters by assigned counsel and fiduciaries to best meet the needs of the incapacitated individual.

7. Updating the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act – A.5476 [O'Donnell]/S.102 [Hoylman].

This measure makes certain technical amendments to the Estates, Powers and Trusts Law (EPTL) and the Surrogate's Court Procedure Act (SCPA) to reflect the provisions of the Marriage Equality Act.

The following bill was reported by the Assembly Judiciary Committee and was pending at the conclusion of session.

8. Protecting the estates of divorced individuals from wrongful distribution - A7638 [Seawright]/S.5684 [Bonacic].

This legislation requires a beneficiary of an estate who is related to the decedent's previous spouse to prove that such distribution was intended by the decedent.

F. CONSTITUTIONAL AMENDMENTS REPORTED BY THE COMMITTEE

The following constitutional amendment passed the Assembly only

1. Promoting the forfeiture or reduction of pension benefits by public officials who breach the public trust – A.7704 [Buchwald].

This legislation provides that certain state and local officers convicted of a felony involving breach of public trust be subject to forfeiture of pension benefits.

The following constitutional amendment was reported by the Assembly Judiciary Committee and was pending at the conclusion of session.

2. Allowing persons who will be 18 years old at the time of a presidential election to vote in primary election if 17 years of age at the time A.504 [Cusick]/S.3242 [Savino].

This legislation would amend the state constitution to allow persons who will be 18 years old at the time of a presidential election to vote in primary election if they are 17 years old at the time. Our laws currently allow such 17 year olds to be eligible to enlist in the armed forces and fight in a war but not have the ability to vote. To date, Indiana, Kentucky, Maine, Maryland, Mississippi, Nebraska, North Carolina, Ohio and Virginia already allow this practice.

G. OTHER LEGISLATION OF INTEREST

1. Clarifying the jurisdiction of the St. Regis Mohawk tribal police – Chapter 121 - A.7256 [Duprey]/S.4869 [Little].

This law amends the Indian Law to authorize the Superintendent of State Police to expand the police powers of the St. Regis Police to include a specific area of Franklin County, outside of the state-recognized boundaries of the St. Regis Indian reservation, in order to facilitate law enforcement efforts concerning smuggling, Driving While Impaired, and other traffic offenses.

III. PUBLIC HEARINGS

Criminal Justice Reform Hearings

On March 11 and May 7, 2015, the Committees on Judiciary, Codes and Corrections joined by the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus held hearings to examine the need for reforms to the criminal justice system to ensure fairness, improve community/police relations, and protect the safety of law enforcement officers. The Committees and the Caucus heard testimony regarding specific reform measures needed to improve fairness and transparency in the criminal justice system.

Use of Body-Worn Cameras by Law Enforcement

The Committees on Judiciary, Codes and Governmental Operations conducted a Public Hearing on December 8, 2015, to examine the feasibility and effectiveness of body cameras worn by law enforcement officials. The Committees heard testimony concerning collateral issues related to body-worn cameras, including privacy concerns, presentation of evidence, and the effects of recording on community-police relations.

IV. NEW YORK STATE'S JUDICIARY FUNDING

The 2015-2016 State budget adopted without change the Judiciary's budget request for appropriations in the amount of \$2.8 billion. The court's budget absorbs statutorily-mandated salary increments for represented non-judicial employees, statutorily-mandated increases for indigent legal defense, supplemental funds for IOLA, and a much needed increase in funding for civil legal services to address the crisis in legal services funding. With this year's Judiciary budget, the Office of Court Administration will maintain current staffing levels, filling just a limited number of positions critical to operations, and plans to keep courtrooms open to the public until 5 p.m. each day.

V. FUNDING FOR LEGAL SERVICES

In 2015, the Assembly built on its support for civil legal services in New York State by increasing its appropriation for civil legal services through the Judiciary budget by \$15 million for a total of \$85 million to help bridge the tremendous gap between civil legal service needs of low-income New Yorkers and the availability of services to meet these needs. As part of the SFY 2015-16 budget, the Assembly also restored its traditional funding for civil legal services in the amount of \$2.65 million and \$609,000 for domestic violence programs. Further, the SFY 2015-16 enacted budget appropriated \$86.9 million for the New York State Office of Indigent Legal Services, representing an increase of \$4 million from the prior year, to support quality improvements for upstate public defender offices, and to support the operations of the Office.

2015 SUMMARY SHEET

SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON

Judiciary

<u>FINAL ACTION</u>	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
BILLS REPORTED WITH OR WITHOUT AMENDMENT			
TO FLOOR; NOT RETURNING TO COMMITTEE (FAVORABLE)	30	0	30
TO WAYS AND MEANS	5	0	5
TO CODES	40	0	40
TO RULES	5	0	5
TO JUDICIARY	0	0	0
TOTAL	80	0	80
BILLS HAVING COMMITTEE REFERENCE CHANGED			
TO _____	0	0	0
TO _____	0	0	0
TO _____	0	0	0
TO _____	0	0	0
TOTAL	0	0	0
SENATE BILLS SUBSTITUTED OR RECALLED			
SUBSTITUTED		3	3
RECALLED		0	0
TOTAL		3	3
BILLS DEFEATED IN COMMITTEE	0	0	0
BILLS HELD FOR CONSIDERATION WITH A ROLL- CALL VOTE	0	0	0
BILLS NEVER REPORTED, HELD IN COMMITTEE	298	34	332
BILLS HAVING ENACTING CLAUSES STRICKEN	3	0	3
MOTIONS TO DISCHARGE LOST	0	0	0
TOTAL BILLS IN COMMITTEE	381	37	418
TOTAL NUMBER OF COMMITTEE MEETINGS HELD	7		