

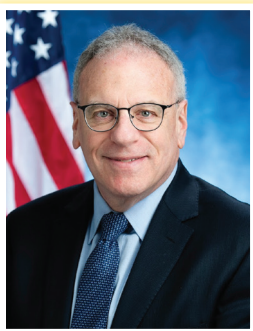
FROM THE NYS Assembly Codes Committee



Winter 2023

Carl E. Heastie, Speaker • Jeffrey Dinowitz, Chair
Legislative Office Building, Room 632, Albany, NY 12248 • www.nyassembly.gov

MESSAGE FROM THE CHAIR



As we approach the start of the 2024 legislative session, the Assembly Committee on Codes is hard at work preparing for what is expected to be a busy and productive session in Albany.

This is my third year as Chair of the Codes Committee. This year we returned to having committee meetings conducted in person and they continue to be live streamed. The transition did not hinder the committee's performance, as it reported a large number of bills, addressing numerous issues related to the Penal Law, the Criminal Procedure Law, and the Civil Practice Law and Rules, among others. By no means an expansive list, many of the bills described herein have gone on to be signed into law by Governor Kathy Hochul.

It is my hope that this newsletter offers some insight into the workings of the Committee and what we achieved this year. Enclosed you will find information on legislation that originated or was re-referenced to the Committee and, at minimum, passed the Assembly in 2023. The bills are organized by the primary law that they amend and represent a small portion of the over 150 that were reported by the Committee this year.

In addition to the work of deliberating on legislation during session, the Committee also held a hearing in November that was focused on Human Trafficking. Testimony was heard from advocates and officials on the issue, and it is clear that there is more work yet to be done. More information on the hearing can be found in this newsletter. On the last page please be sure to note the contact information that may be of use to you.

Lastly, I hope you and yours had a warm and safe holiday season.

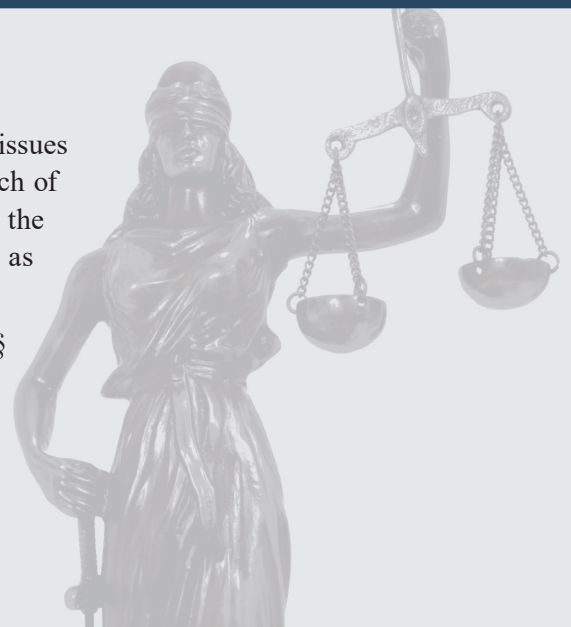
Sincerely,

Jeffrey Dinowitz
Chair, New York State Assembly Codes Committee

COMMITTEE JURISDICTION

The New York State Assembly Standing Committee on Codes considers issues and legislation regarding the State's criminal and civil justice system. Much of the legislation considered by the members of the Codes Committee amends the Criminal Procedure Law, the Penal Law, the Civil Practice Law and Rules, as well as selected articles of the Executive Law.

In addition, the Committee's dual reference authority, pursuant to Rule IV § 6 (i) of the Rules of the Assembly of the State of New York, places within its jurisdiction legislation initiated in any of the other Assembly standing committees which imposes or changes any fine, term of imprisonment, forfeiture of rights or property, or other penal sanction, as well as legislation related to the procedure by which such fine, term of imprisonment, forfeiture, or other penal sanction is imposed or changed.





Penal Law

A.154-A (Cruz) / S.2832-A (Breslin) – Adds wage theft to the types of activities included in the crime of larceny.

This bill amended the Penal Law by modifying the definition of property to include compensation for labor or services and provide when wages are stolen for the purposes of larceny.

A person is guilty of Wage Theft when he or she hires someone to perform services but fails to pay the minimum wage rate, overtime, or the promised wage for the work performed. In prosecution of wage theft, it is permissible to aggregate all nonpayments or underpayments into a single larceny count.

(Signed by the Governor – Chapter 353 of the laws of 2023)

A.3596-A (Paulin) / S.1042-A (Hinchey) – Amends the crime of unlawful dissemination or publication of an intimate image to digitized images where a person is identifiable.

This bill amended the Penal Law to add to the crime of unlawful dissemination or publication of an intimate image, which includes instances where an individual disseminates, or publishes a still or video image depicting another person with one or more intimate parts exposed or engaging in sexual conduct with another person, to now include digitized images where a person is identifiable and when the actor knew or should have known that the person depicted did not consent.

This bill captures instances where the utilization of AI-generated technology to make images of fake events, known as “deep fakes,” allows an individual to create extremely realistic videos which place the face of one individual on the body of another. Concerningly, “deep-fakes” are being weaponized against innocent and unsuspecting victims and they are becoming increasingly more common.

(Signed by the Governor – Chapter 513 of the laws of 2023)

A.3340 (Cruz) / S.3161 (Hoylman-Sigal) – Amends the rape statute to remove the requirement of proof of penetration.

This bill would amend the Penal Law, the Criminal Procedure Law, the Correction Law, the Social Services Law, the Vehicle and Traffic Law, the Family Court Act, the Civil Rights Law, the Civil Practice Law and Rules, the Agriculture and Markets Law, the Judiciary Law, and the Domestic Relations Law to replace “sexual intercourse,” defined as occurring upon penetration, and replacing it with “vaginal sexual contact” defined as contact between the penis and the vagina or vulva.

Rape would include any forcible contact between the male and female reproductive organs and redefines Rape to include vaginal sexual contact, oral sexual contact, and anal sexual contact, the latter two of which are currently statutorily designated as Criminal Sexual Acts. The penalties would remain the same.

(Passed both houses – awaiting action by the Governor)

Criminal Procedure Law

A.1029-C (Cruz) / S.7551-A (Myrie) – Enacts “Clean Slate” providing for the automatic sealing of certain convictions after a certain passage of time from either imposition of sentence, release from parole, or probation, and if the defendant does not have a current charge pending.

This bill amended the Criminal Procedure Law, the Executive Law, the Correction Law, the Judiciary Law, and the Civil Rights Law to automatically seal conviction records for the crime of driving under the influence of alcohol or drugs after three years, misdemeanors after three years, and felony convictions after eight years from the sentencing date, or, if the person was incarcerated, once they are released provided they are not under the supervision of any probation or parole department for the conviction eligible for sealing. The bill prohibits the automatic sealing of Class A felonies and Sex Offenses and would also provide access to records in limited exceptions to entities authorized to conduct fingerprint-based criminal checks. Finally, the bill allows any person who has had a conviction sealed to bring a cause of action for damages against a party who, without consent of such person, discloses such sealed conviction in certain circumstances.

(Signed by the Governor – Chapter 631 of the laws of 2023)

A.1709-B (Reyes) / S.1066-B (Mayer) – Provides protections to health service providers who perform legally protected health activities.

This bill amended the Criminal Procedure Law, the Executive Law, the Civil Practice Law and Rules, the Insurance Law, and the Education Law to prohibit providers performing legally protected health activity while physically present in New York State from liability or extradition unless physically present in the demanding state. State and local government and employees are also prohibited from cooperating with or using resources for an out of state investigation of any legally protected health activity. Additionally, with limited exceptions, in a civil action, courts and clerks are prevented from issuing a subpoena in connection with an out of state proceeding relating to legally protected health activity that occurred in New York State. Finally, medical malpractice insurers are prevented from taking adverse action against a provider who engages in a legally protected health activity and exempts providers from being subject to discipline for providing legally protected health activity.

(Signed by the Governor – Chapter 138 of the laws of 2023)

A.5074 (Epstein) / S.5332 (Harcsham) – Requires written notice to a defendant of his or her right to complete court ordered alcohol or substance use treatment in a nonreligious treatment program.

This bill would have amended the criminal procedure law and the penal law to establish a process by which the court inquires on the record whether a defendant, whom has been ordered to attend an alcohol or substance use treatment program, has an objection to

any religious element of that program, and if the defendant does have an objection, then the court would be required to approve an equivalent program to which the defendant has no religious objection.

(Vetoed)

A.4899 (Dinowitz) / S.4397 (Hoylman-Sigal) – Authorizes the chief administrator of the courts to require and provide annual training regarding bail, recognizance, and commitment procedures and standards.

This bill would amend the Criminal Procedure Law to provide at least three hours of mandatory annual training regarding bail, recognizance, and commitment procedures and standards for all judges exercising preliminary jurisdiction over any offense. This training would include a thorough explanation of relevant and recent statutory changes to the Criminal Procedure Law.

(Passed both houses – awaiting action by the Governor)

A.2878-A (Aubry) / S.7548 (Myrie) – Relates to motions to vacate judgment.

This bill would amend the Criminal Procedure Law to provide people previously convicted of crimes the opportunity for meaningful review to ensure redress for wrongful convictions, including in cases where the person pled guilty. Additionally, the bill would also remove procedural bars to allow people to challenge convictions based on false or faulty evidence and extends new due process protections to applicants for post-conviction relief. Applicants for post-conviction relief would be allowed to request defense counsel and would require the court to appoint counsel in cases where the person requesting relief requests counsel, is indigent, or would otherwise qualify for free representation at the trial-level.

(Passed both houses – awaiting action by the Governor)

A.3057 (Cruz) / S.5826 (Kavanagh) – Requires notice of risk of deportation of non-citizens, prior to accepting a plea.

This bill would amend the Criminal Procedure Law to require courts to notify a defendant that pleading guilty to a misdemeanor or violation, if he or she is not a U.S. citizen, may result in deportation proceedings, removal from the United States, exclusion from the United States, or denial of citizenship.

(Passed both houses – awaiting action by the Governor)

A.129 (Cruz) / S.2193 (Bailey) – Requires accurate interpretation of statements made by deponents with limited English proficiency in accusatory instruments and supporting depositions.

This bill would amend the criminal procedure law to require allegations and/or supporting statements by someone who is not English proficient to be accurately translated to the person's primary language by requiring either that the statement be written in the primary language of the deponent with an English translation that has a verification written by the interpreter and an affidavit by the interpreter stating their qualifications and affirming the accuracy of the translation or that the statement in English be drafted by the interpreter along with an affidavit stating their qualifications, affirming the accuracy of the translation, that the content was communicated accurately to the deponent in their primary language, that the deponent confirmed accuracy of the allegations, and that the verification statement was accurately translated to the witness in their primary language.

(Passed both houses – awaiting action by the Governor)

A.1880-A (Dinowitz) / S.2615 (Parker) – Creates the New York Electronic Communications Privacy Act.

This bill would amend the criminal procedure law to clarify that law enforcement agents and agencies would be required to obtain a search warrant for the physical or electronic access to an electronic device and the information they contain. The warrant would be required to describe with particularity the information to be seized and the government agency must provide contemporaneous notice to the target of the warrant, with exceptions for emergency situations.

(Passed the Assembly – awaiting action by the Senate)

Civil Practice Law and Rules

A.6065 (Dinowitz) / S.2997 (Rivera) – Provides that an affirmation of a health care practitioner may be served or filed in an action in lieu of and with same force and effect as an affidavit.

This bill amends the civil practice law and rules permitting all health care practitioners to serve or file an affirmation, under the penalties of perjury, in lieu of an affidavit in civil judicial proceedings. This eliminates the requirements to sign before a notary. Previously, this right was extended only to attorneys, physician, osteopath, and dentists.

(Signed by the Governor – Chapter 585 of the laws of 2023)

A.4721 (Solages) / S.5137 (Gonzalez) – Prohibits a court from denying class certification for purposes of class action lawsuits solely because the action involves governmental operations.

This bill would amend the Civil Practice Law and Rules to specify that once the requirements of the class action provisions are satisfied, the court will not deny or withhold class certification only because the action involves governmental operations.

(Passed both houses – awaiting action by the Governor)

Other Laws

A.6046-B (Bronson) / S.2475-B (Hoylman-Sigal) – Establishes protections for individuals receiving gender affirming care as well as for providers who perform gender affirming care within New York State.

This bill amends the family court act, the executive law, the civil practice law and rules, the criminal procedure law, the education law, the public health law and the insurance law to prohibit the enforcement of a law of another state which allows a child to be removed from their parent or guardian based on allowing the child to received gender affirming care. Courts in New York State are also precluded from admitting or considering a finding of abuse based on their parent or guardian allowing their child to receive or seek gender-affirming care. State and local law enforcement agencies are also prohibited from cooperating with out of state agencies regarding lawful gender-affirming care performed in this state. Additionally, with limited exceptions, courts and clerks are prevented from issuing a subpoena in connection with an out of state proceeding relating to gender-affirming care performed in New York State. Finally, extradition requests will not be honored unless the demanding state alleges that the accused was present in the demanding state at the commission of the alleged offense.

(Signed by the Governor – Chapter 143 of the laws of 2023)

A.3983 (Thiele) / S.4671 (Thomas) – Makes a person guilty of the crime of aggravated unlicensed operation of a motor vehicle in the first degree when they know or should know that they have five or more suspensions or revocations in effect and are operating a motor vehicle.

This bill would amend the vehicle and traffic law to make a person guilty of the crime of aggravated unlicensed operation of a motor vehicle in the first degree when they commit the offense of aggravated unlicensed operation of a motor vehicle in the third degree and are operating a motor vehicle while they have five or more suspensions or revocations in effect imposed on at least five separate dates. Under this new element, the penalty would be enhanced from a misdemeanor, subject to a fine of two hundred dollars to five hundred dollars, a term of imprisonment of up to thirty days, or both to a class E felony, subject to a fine of five hundred dollars to five thousand dollars and a term of imprisonment of a definite sentence to a maximum of two years, or where appropriate and a term of imprisonment is not required under the penal law, a sentence of probation, or a term of imprisonment as a condition of a sentence of probation. The New York State Department of Motor Vehicles would also be required to provide written notice to individuals whose license is suspended or revoked four times and alerting them that a fifth suspension or revocation would subject them to a Class E felony if charged with aggravated unlicensed operation of a motor vehicle in the first degree.

(Signed by the Governor - Chapter 722 of the laws of 2023)



A.6544 (Hevesi) / S.7444 (Brisport) – Relates to the sealing and expungement of records in persons in need of supervision cases in family court.

This bill would amend the family court act to allow the expungement of records in juvenile delinquency cases in Family Court largely to track expungement of records under the criminal procedure law. The use of records as evidence in another court proceeding would be prohibited, actions terminated in favor of the accused would be automatically expunged, and records of juveniles would be required to be expunged once the juvenile reaches the age of 21, if not done sooner.

(Signed by the Governor - Chapter 691 of the laws 2023)

Public Hearing:

Examining the current scope of assistance, services, and protections available to victims of human trafficking in New York State

The Assembly Codes Committee held a hearing to seek input on legislation and policy concerning Human Trafficking. The hearing was held jointly with the Assembly Social Services Committee and the Human Trafficking Subcommittee. New York State Law recognizes two types of human trafficking: sex trafficking and labor trafficking. Human trafficking occurs when people, typically women and children, are transported, usually across borders, and subjected to ongoing sexual exploitation or forced labor through coercion or threat. In certain cases, physical force is also used whereas in other cases, false promises are made regarding job opportunities or marriages in foreign countries. Once enslaved, victims are sometimes drugged and beaten into submission, and their travel documents and IDs are confiscated or destroyed to make it harder for victims to escape, or for authorities to track them down. The Assembly Majority has championed legislation, and enacted laws, to combat human trafficking. In 2007, New York State enacted my legislation to combat the crime of human trafficking by strengthening penalties against human traffickers and aiding victims. In 2017, the enactment of the Trafficking Victims Protection and Justice Act improved the State’s response to human trafficking by enhancing protection of, and assistance to, victims of trafficking. Most recently, three significant pieces of legislation were signed into law to strengthen protections for victims of human trafficking: including permitting survivors of human trafficking to bring a civil action against their perpetrator to recover damages, extending the statute of limitations on such actions from ten to fifteen years; allowing survivors of human trafficking to bring a motion to vacate any criminal conviction where such offense was a result of having been a victim of human trafficking; and requiring law enforcement and district attorney’s offices to advise human trafficking victims of available social and legal services.

The purpose of the hearing was to receive testimony and investigate the scope of assistance, services, and protections currently available to human trafficking victims throughout New York State and to examine if current laws can enable human trafficking survivors to get the justice that they deserve. The Committee heard valuable testimony from survivors, advocates, and various public officials, including from the Brooklyn District Attorney’s office and the Manhattan District Attorney’s office.

New York State Assembly, Albany, New York 12248

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IMPORTANT CONTACTS

- **New York State Unified Court System Office of Court Administration**
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 4 ESP, Suite 2001, Empire State Plaza
 Albany, NY 12223-1450
 518-453-8650
New York City:
 25 Beaver Street, Room 852
 New York, NY 10004
 NYC Office: 212-428-2700
<https://www.nycourts.gov/>
- **New York State Attorney General**
 The Capitol
 Albany, NY 12224
 1-800-771-7755
www.ag.ny.gov
- **New York State Division of Criminal Justice Services (DCJS)**
 Alfred E. Smith State Office Building
 80 South Swan Street
 Albany, NY 12210
 518-457-5837 or 800-262-3257
www.criminaljustice.ny.gov
- **New York State Department of Corrections and Community Supervision (DOCCS)**
 Building Two
 1220 Washington Avenue
 Albany, NY 12226
 518-457-8126
www.doccs.ny.gov
- **New York State Commission of Correction**
 Alfred E. Smith State Office Building
 80 South Swan Street, 12th Floor
 Albany, NY 12210
 518-485-2346
www.scoc.ny.gov/contact.htm
- **New York State Division of State Police**
 1220 Washington Avenue, Bldg. 22
 Albany, NY 12226
www.troopers.ny.gov
- **New York State Office for the Prevention of Domestic Violence**
 Alfred E. Smith State Office Building
 80 South Swan Street, 11th Floor
 Room 1157, Albany, NY 12210
 518-457-5800
www.opdv.ny.gov
- **New York State Office of Victim Services**
Albany:
 Alfred E. Smith State Office Building
 80 S. Swan Street, 2nd Floor
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