

From the NYS Assembly Judiciary Committee

Sheldon Silver, Speaker • Helene E. Weinstein, Chair • Fall 2013
Legislative Office Building, Room 831, Albany, NY 12248

Letter from the Chair



The Judiciary Committee has jurisdiction over virtually all legislation affecting the state judicial system and much of the legislation affecting civil practice in the courts. Among the legislation reviewed by

the Committee are proposals concerning domestic relations and child support, protection of domestic violence victims, trusts and estates, guardians for incapacitated persons, real property and landlord-tenant law, lien law, debtor-creditor law, and the uniform commercial code. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee, which in 2013 resulted in a number of proposals being placed on the ballot for consideration by the voters.

The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means 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. Once again, this year, in light of the lasting impact of the economic crisis and the devastation of Superstorm Sandy on already scarce funding resources for civil legal services and on the rising and unmet demand for these services, the Judiciary Committee remained a strong advocate for providing civil legal services to those in need.

The Judiciary Committee tackled many high profile issues in 2013, including mortgage foreclosure protection, consumer protection, response to state disaster emergency, and protecting domestic violence victims.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2013.

Sincerely,

Helene E. Weinstein, Chair
New York State Assembly
Judiciary Committee

PROTECTING HOMEOWNERS AND PREVENTING FRAUD IN RESIDENTIAL MORTGAGE FORECLOSURES



New York has been a national leader in confronting the foreclosure crisis affecting our citizens. We have enacted numerous reforms and continue to push for additional reforms. When the foreclosure crisis hit our state, the Assembly worked with the Governor to establish judicial foreclosure conferences to oversee the process and facilitate settlements between borrowers and lenders. In response to the robo-signing scandal, additional measures were taken to rein in the abusive practices by lenders in foreclosure cases. Below are some of the Committee's efforts in this area in 2013.

Halting Wrongful Foreclosures—Certificate of Merit. A multi-year effort by the Assembly to address foreclosure abuses culminated in the enactment of Chapter 306 of the Laws of 2013. This joint program bill from Chief Judge Jonathan Lippman and Attorney General Eric Schneiderman will deter the filing of non-meritorious residential foreclosure cases. In resolving the problem of the shadow docket, where lenders fail to move the case forward while fees and costs continue to accrue, this law will also help make sure that future homeowners have a fair opportunity to have their foreclosure cases heard in a timely manner and benefit from our state's recently enacted strong foreclosure protection laws.

Among other steps, the new law requires lender attorneys to file a certificate of merit that attests that there is a reasonable basis for the foreclosure action. It sets forth the required elements of a foreclosure claim and lists the sanctions available to a judge should the lender fail to submit their proof. L. 2013, c. 306, A.5582A – Weinstein.

Fraud Prevention. This bill would address the problem where lawyers appointed as court referees to oversee a foreclosure sale fail to ensure that surplus monies, if there are any, are paid out to the proper parties. This legislation institutes a process to notify homeowners and the courts of any surplus funds remaining to enable the Office of Court Administration to reconcile the accounts. A.7953A – Weinstein. (Passed Assembly only).

RESPONDING TO THE NEEDS OF FAMILIES AND PROTECTING DOMESTIC VIOLENCE VICTIMS

In the 2013 legislative session, a number of measures were enacted to strengthen protections for domestic violence and sexual assault victims and their children and to improve the well-being of New York's families. Below are a few of these measures.

Economic abuse as a form of domestic abuse. The New York State Assembly Judiciary and Codes Committees held a joint hearing on December 5, 2012, to examine the problem of economic abuse as a form of domestic abuse. As a result of recommendations from the hearing, the legislature enacted a measure that will protect victims of domestic abuse and their children by permitting victims to obtain an order of protection on the basis of certain types of economic abuse. The legislation also authorizes the court to direct the abuser to return the victim's identity documents. A.7400 – Weinstein. (Passed both houses).

Protection from prosecution for violating own order of protection. Clearly reaffirming the intent of the original 1994 Family Protection and Domestic Violence Intervention Act, this legislation protects domestic violence victims from being charged with or prosecuted for violating orders of protection issued on their behalf. L. 2013, c. 480, A.6547-B- Weinstein.

Protecting children from sexual offenders in custody and visitation cases. This measure establishes a presumption that custody to or visitation with certain convicted sexual offenders is not in the child's best interest when the child is conceived as a result of the sexual offense. L. 2013, c. 371, A.7188A – Paulin.

Accommodation for minors in vacating acknowledgments of paternity. Recognizing that acknowledgments of paternity executed by minor parents may warrant special considerations, this legislation extends the time period for minors to apply to vacate their paternity acknowledgment in court. L. 2013, c. 402, A.7375 – Weinstein.

Interpretation of Orders of Protection. A measure that would help non-English speaking parties to better understand the essential terms of an order of protection as outlined by the court passed the Assembly, but did not pass the Senate. A.1084 - Weinstein. (Passed Assembly Only).

ADMINISTRATION OF JUSTICE

Following are some reforms the Judiciary Committee has enacted to make our justice system more responsive, fair and efficient.

Prevents abuse during discovery. This bill closes a loophole and allows a non-party to challenge the production of their records in a case. Under existing law, a party or the person from whom discovery is sought are the only persons who may seek this relief but not a third-party about whom records are being subpoenaed. L. 2013, c. 205, A.6554 – Braunstein.

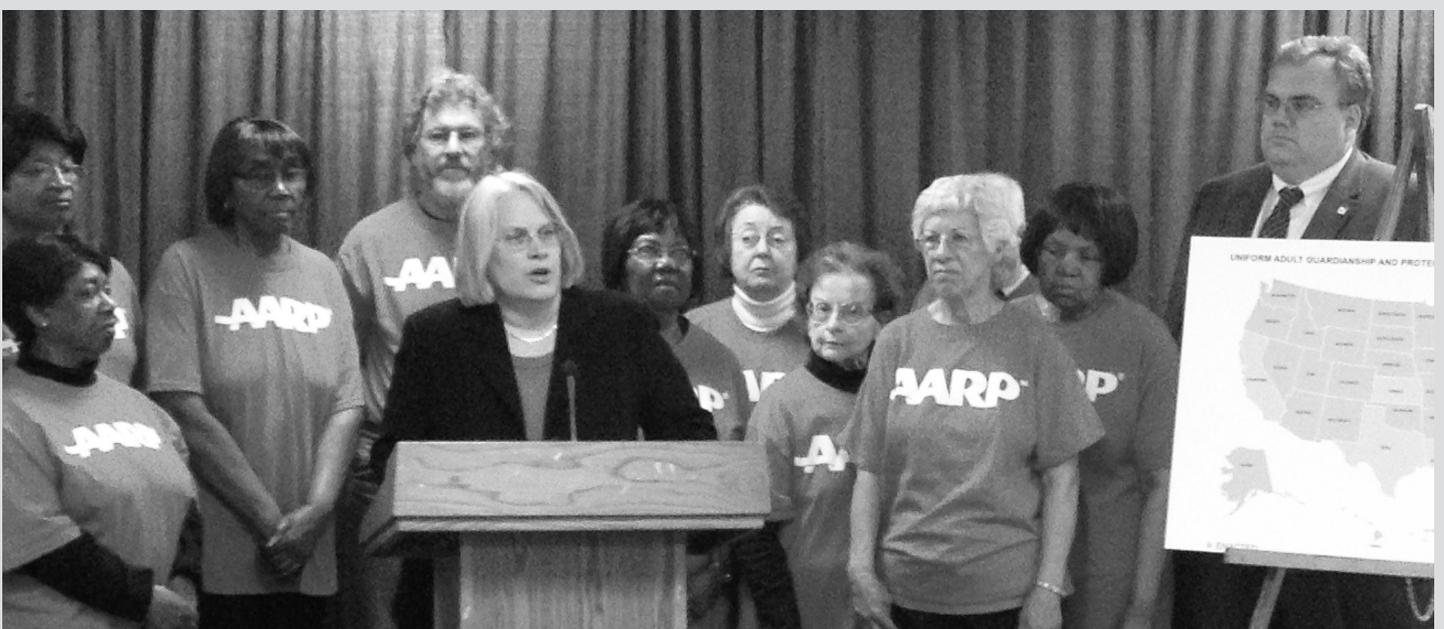
Frivolous Lawsuits Against Public Participation (Anti-SLAPP). This bill would protect citizens from frivolous litigation that is intended to silence their exercise of the rights of free speech and petition about matters of public concern. A.856 – Weinstein. (Passed Assembly only).

Protecting parties to the settlement of tort claims. By clarifying that medical insurers are prohibited from liens and reimbursement claims against either plaintiffs or defendants who are involved in tort litigation, this law prevents insurers from realizing a double-recovery in tort cases at the expense of injured plaintiffs where

insurers have already received premiums for these claims. L. 2013, c. 516, A.7828A – Weinstein.

Retaliatory false filing of financial statements. To deter the filing of retaliatory false financial instruments against judges and others involved in the administration of justice, this law expands the penalties for these filings. Such false filings are typically made to impair a person's credit. The law also creates an expedited procedure by which the courts can remove these false filings from the public record. L. 2013, c. 490, A.8013 - Gabryszak.

Prevailing party for counsel fees in action against state. This measure would close a significant loophole in the 1989 Equal Access to Justice Act, by facilitating the retention of an attorney for people who may not otherwise be able to afford one to recover damages when the State engages in wrongful conduct. A.2068A – Schimminger. (Passed Assembly only).



Helene Weinstein, Chair of the New York State Assembly Judiciary Committee, with AARP members at a press Conference on the importance of the Uniform Guardianship Act.

JUDICIARY AND LEGAL PRACTICE



In keeping with the Assembly Judiciary Committee's long-standing priority of enacting laws to enable the courts to function more effectively, below is some of the legislation that the Assembly passed.

Expansion of City Court judgeships. This bill from the Office of Court Administration would increase judicial resources for the City Courts of New York State. The increases are based upon judicial caseloads. A.6552B – Morelle. (Passed both houses).

Judicial Retirement. A constitutional amendment that would allow Supreme Court certificated justices and Court of Appeals judges to serve until 80 years of age, up from 76 and 70 years of age respectively under

present law was rejected by the voters on November 5, 2013. A.4395 – Weinstein.

Uniformity in attorney requirement to file record of criminal conviction. This law requested by the Office of Court Administration would conform the misdemeanor conviction filing requirements for attorneys convicted in a Justice Court to the filing requirements for attorneys convicted in a City or District Court. L. 2013, c. 283, A7460 – Buchwald.

CONSUMER PROTECTIONS

The Assembly Judiciary Committee continues to spearhead legal reforms as a leader in consumer protection—from the enactment of the Exempt Income Protection Act of 2008 (which protected social security, veterans disability and other exempt income from being seized by creditors) to the expansion of bankruptcy exemptions in 2010 (which increased the quantity of exempt property in bankruptcy due to inflation).

Expediting insurance claims for damages in a state disaster emergency. This bill would allow storm-devastated home and business owners an accelerated path in litigation against their insurers to enforce their policy's contractual rights. A.5570 – Titone. (Passed Assembly only).

Consumer Credit Fairness Act. This bill focuses on stopping abusive debt collection practices, the effects of which are particularly harmful to domestic violence victims. This measure would ensure that creditors obtain a judgment on the merits of their case and would further provide important consumer protections. It would prevent debt buyers from suing the wrong person, suing for moneys that have already been paid, suing on debts that are past the legal time limits for bringing a lawsuit and suing on debts without proper proof. A.2678 – Weinstein (Passed Assembly only).

TRUSTS AND ESTATES

The Assembly Judiciary Committee had a successful year enacting trusts and estates legislation that protects and supports vulnerable disabled and elderly individuals. In addition, legislation was enacted revising and clarifying trust laws to better meet the needs of New York's trust beneficiaries.

Uniform Guardianship and Protective Proceedings Jurisdiction Act. To address problems resulting from conflicting jurisdiction over adult guardianship cases that typically arise in situations involving snowbirds, transferred or long-distance care giving arrangements, wandering, and even the occasional incidence of elderly kidnapping, this legislation creates a roadmap and uniform procedures for interstate adult guardianship cases, bringing peace of mind to disabled individuals and their caregivers. L. 2013, c. 427, A.857 – Weinstein.

Power of appointment and trustee's authority to invade trust principal. This clarifying legislation leaves no doubt that the expanded flexibility granted by the legislature in 2011 via chapter 451 to New York State trustees to serve the complex financial needs of their clients applies to all New York trusts which meet the requirements of New York's trust laws, regardless of when the trusts were created. L. 2013, c. 432, A.4061 – Weinstein.

Exemption for filing fees on certain adult guardianship cases. This legislation exempts court-appointed personnel assigned to assist an incapacitated person in adult guardianship cases from the filing fees of \$45 for civil motions in these guardianship cases, thereby ameliorating a significant burden currently placed on precisely the vulnerable population that the guardianship law is intended to protect. A.1928 – Titus. (Passed the Assembly only).

FUNDING FOR LEGAL SERVICES AND ACCESS TO JUSTICE



Chief Administrative Judge, Hon. A. Gail Prudenti, testifying at a joint budget hearing on public protection held by the Assembly Ways and Means and Senate Finance committees.

Civil Legal Services

The Assembly has long recognized that civil legal services are an essential social safety net for the most vulnerable of our state's population.

Over the last couple of years, in response to the civil legal services funding crisis, the Assembly, in partnership with Chief Judge Jonathan Lippman, has supported funding for civil legal services through the Judiciary budget. This year, the Assembly continued its support of civil legal services in New York State by continuing a \$15 million supplemental appropriation for IOLA to fund its grantees and a \$40 million appropriation to help bridge the tremendous and sharply rising 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 2013-14 budget, the Assembly also restored its funding for civil legal services in the amount of \$2.65 million and \$609,000 for domestic violence programs.

Indigent Defense

With the help of advocacy from the Assembly Judiciary Committee, the SFY 2013-14 enacted budget included a modest increase of \$300,000 to the operating budget of the Office of Indigent Legal Services (the Office) to enable it to fulfill its mandate to ensure a uniform and improved public defense delivery system statewide. This budget also restored \$4 million in aid to localities funding to help, among other things, eradicate excessive caseloads in upstate counties and increase availability of defense counsel at arraignment.

Judiciary Funding

The 2013-2014 Judiciary budget requested total appropriations of \$2.6 billion. This includes statutorily mandated salary increments for judicial and non-judicial employees and a much-needed increase in funding for civil legal services to address the crisis in legal services funding.

NEWS

From the NYS Assembly Judiciary Committee

INSIDE...

- Protecting Homeowners and Preventing Fraud in Residential Mortgage Foreclosures
- Responding to the Needs of Families and Protecting Domestic Violence Victims
- Judiciary and Legal Practice
- Administration of Justice
- Consumer Protections
- Trusts and Estates
- Funding for Legal Services and Access to Justice