

# New York State Assembly | Sheldon Silver, Speaker



committee on  
**Judiciary**

Helene Weinstein, Chairperson

December 15, 2009

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 – 2009**

Dear Speaker Silver:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2009 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.

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

## **2009 ANNUAL REPORT**

### **STANDING COMMITTEE ON JUDICIARY**

**Helene E. Weinstein, Chair**

#### **Committee Members**

##### **Majority**

Jonathan L. Bing  
Adam Bradley  
Jeffrey Dinowitz  
Michael N. Gianaris  
Janele Hyer-Spencer  
Hakeem Jeffries  
Susan V. John  
Rory I. Lancman  
Charles D. Lavine  
Daniel J. O'Donnell  
Peter M. Rivera  
Matthew Titone  
Michele R. Titus  
Mark Weprin  
Kenneth Zebrowski

##### **Minority**

Jack Quinn, Ranking Member  
Tom Alfano  
William A. Barclay  
Tom McKeivitt  
Thomas F. O'Mara

##### **Staff**

Seth H. Agata, 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  
Kathi LaFontaine, Administrative Assistant

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## **I. 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 Relation's 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. It shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee.

The Judiciary Committee works closely with other committees of the Assembly, including the committees on Rules, Ways and Means, and Codes. All committees in the Legislature report proposed constitutional amendments to the Judiciary Committee.

## II. NEW YORK STATE'S JUDICIARY BUDGET

In December 2008, the Office of Court Administration proposed a General Fund State Operations and Aid to Localities budget request for SFY 2009-10 of \$2.27 billion, which contained no increase. The All Funds budget totaled \$2.52 billion, an increase of \$2.3 million or .1% over the previous fiscal year. Caseloads continued to increase last year with another new record for total filings. The vast majority of the Judiciary's budget was for non-discretionary costs.

The budget included increased funding in the following amounts:

- \$40 million for increments, salary increases, longevity bonuses and other mandated collective bargaining costs;
- \$9 million to annualize the cost of shifting from local to state paid security;
- \$1.8 million for compliance costs that relate to the civil confinement of sex offenders; and
- \$6.6 million in increased child legal representation costs that relate to guardian caseload caps.

The budget included decreased spending in the following amounts:

- \$(20.1) million in personal service savings as a result of the vacancy control program;
- \$(4.1) million in non-personal service savings attributable to the elimination of previously planned public safety enhancements, which includes the conversion from local to state-paid security in various upstate localities; and
- \$(4.6) million in non-personnel service savings attributable to a variety of cost saving measures including but not limited to a reduction in spending on legal reference materials, business related travel and equipment.

### III. LEGISLATIVE ACCOMPLISHMENTS<sup>1</sup>

#### A. PROTECTING CHILDREN AND FAMILIES

1. Review of Registry for Custody and Visitation Orders – Chapter 295 – A.2004A [Weinstein]/S.5697 [Sampson]

This law amends Chapter 595 of the Laws of 2008 in certain technical and procedural matters. It further protects children from being harmed by persons who should not be given custody or unsupervised access to them by mandating that judges check the sex offender registry, the statewide registry of orders of protection, family court warrants of arrest and decisions in abuse and neglect proceedings pursuant to Article 10 of the Family Court Act before issuing temporary or permanent custody or visitation orders.

2. Military Custody and Visitation Orders – Chapter 473 – A.8789 [Ortiz]/S.6037 [Aubertine]

This law bolsters the ability of a parent returning from active deployment in the military to obtain judicial reconsideration of a prior custody or visitation order. It also makes conforming changes to other provisions of the law governing custody and visitation to reflect the recent amendments to New York State's Uniform Child Custody Jurisdiction and Enforcement Act.

3. Child Support Standards – Chapter 343 – A.8888 [Weinstein]/S.3879A [Montgomery]

This law increases the combined parental income amount to which the statutorily mandated percentages of the Child Support Standards Act (CSSA) must be applied for the calculation of child support from \$80,000 to \$130,000, with a mechanism to update this amount every two years based on changes in the Consumer Price Index.

4. Medical Insurance and Child Support – Chapter 215 – A.8977 [Weinstein]/S.4214B [Sampson]

This law clarifies the point at which parents are required to provide health coverage for their children if such medical insurance is "reasonable in cost" and "reasonably accessible" by more clearly defining these terms under the state's child support laws.

5. Repealed - Offers in Compromise – Chapter 32 – A.2578 [Weinstein]/S.2975 [Sampson]

This law repeals Family Court Act Section 516, an outdated and constitutionally suspect law that predated the child support guidelines and permitted parents to bargain away children's rights to child support outside the requirements of the guidelines while also prohibiting future modifications to the detriment of children.

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<sup>1</sup> All references to chapters, except where otherwise noted, are to chapters of the laws of 2009.

## **B. PROTECTING VICTIMS OF DOMESTIC VIOLENCE**

### **1. Domestic Violence, Custody/Visitation and Orders of Protection – Chapter 476 – A.9017 [Weinstein]/S.5031A [Hassell-Thompson]**

This law enhances protections for domestic violence victims by requiring each court to document how domestic violence or child abuse was factored into a particular custody/visitation determination. It adds certain sex offenses for which an order of protection may be sought in family court. It allows law enforcement access to arrest and prosecution records for convictions of harassment in the second degree resulting from a family offense. This ensures that law enforcement has information regarding the individual's domestic violence history in order to make informed decisions impacting victim safety.

### **2. Personal Identifying Information Sealed During Pendency of Name Change Proceeding – Chapter 83 – A.3468 [Scarborough]/S.4434 [Kruger]**

This law requires personal identifying information on papers submitted in court by a name change applicant to remain sealed while the case is pending thereby protecting the identity of the applicant during the action. Under current law, a person's name is public information until the court grants the name change.

### **3. Ex Parte Orders of Protection – Chapter 17 – A.4393 [Weinstein]/S.2353 [Sampson]**

This law makes technical corrections to the statute which concerns the authority of the Family Courts to issue certain ex parte orders of protection.

**The Assembly passed the following bills, which were not acted upon by the Senate:**

- 1. Translation of orders of protection –** This bill would require a court that issues an order of protection to ensure that the essential terms of the order of protection are translated on the record into the native language of the parties. **(A.5273A - Espailat)**
- 2. Preventing improper denial of order of protection –** This bill would require that a court not deny an order of protection merely because the events alleged are not contemporaneous with the application or hearing for the order of protection. **(A.8393 - Weinstein)**

**The Governor vetoed the following bills:**

- 1. Sexual assault training – (A.4629-B – Weinstein) Veto #68 –** If enacted, this bill would have required police officers and child protective service workers to receive training with respect to crimes involving sexual assaults.

2. **Address confidentiality program – (A.2858 – Weinstein) Veto #8** – If enacted, this bill would have created an address confidentiality program for victims of domestic violence fleeing their home as a result of domestic abuse and fearing for their physical safety at the hand of their abuser.

We will work with the Executive during the 2010 session to craft legislation to meet the goals of these vetoed proposals.

### **C. MATRIMONIAL LEGISLATION**

1. **Automatic Restraining Orders – Chapter 72 – A.2574 [Weinstein]/S.2970 [Sampson]**

This law bars parties in divorce cases from dissipating marital assets by automatically imposing restraining orders at the commencement of a matrimonial action.

2. **Health Insurance, Equitable Distribution and Maintenance – Chapter 229 – A.7570 [Weinstein/S.4533 [Sampson]**

This law amends the domestic relations law to include the loss of health-insurance coverage as an additional factor to be considered in the determination of equitable distribution of marital property and the award of maintenance.

3. **Health Insurance and Divorce – Chapter 143 – A.7561 [Bradley]/S.2851A [Sampson]**

This law will ensure that parties to divorce actions are informed about the possible loss of health insurance when such coverage is obtained through the opposing party.

**The Assembly passed the following bill, which awaits action by the Senate:**

1. **Presumption of pendente lite attorneys fees – A.7569 [Weinstein]** – This bill would create a rebuttable presumption of pendente lite attorney's fees in favor of the non-monied spouse.

**The Assembly approved the following bill, which was defeated in the Senate:**

1. **Marriage Equality – A.7732/S.4401 and A.40003/S.66003 [O'Donnell]** – This bill, which passed the Assembly twice this year, would grant same-sex couples the same rights to enter into civil marriages as heterosexual couples. A.40003/S.66003 was voted down in the Senate in December 2009, during Extraordinary Session.

## **D. CIVIL PRACTICE**

### **1. Electronic Filing – Chapter 416 – A.8956A [Weinstein]/S.6003A [Schimminger]**

This law will extend the use of electronic filing and facsimile transmission statewide in Supreme Court, Surrogate's Court, Court of Claims and the New York City Civil Court in all classes of cases where the parties consent. It will also permit the Chief Administrative Judge to institute a program of mandatory electronic filing in Supreme Court in certain commercial cases in New York County, in tort cases in Westchester County and in one or more classes of cases (excluding matrimonial, CPLR Article 78's, Election Law cases and cases under the Mental Hygiene Law) in one other county designated by the Chief Administrative Judge outside New York City. Attorneys may opt out if they lack the equipment, knowledge or for good cause shown. Pro se litigants may opt out as of right.

### **2. Prohibiting Certain Agreements – Chapter 224 – A.2369 [Cusick]/S.800 [Breslin]**

This law prohibits contract clauses that condition the right to sue on the exhaustion of other remedies. These clauses prevent a litigant from suing before the statute of limitations expires.

### **3. New York City Marshals – Chapter 103 – A.4790 [Weinstein]/S.2076 [Klein]**

This Governor's program bill extends the law that authorizes the New York City Marshals until 2014.

### **4. Poundage – Chapter 381 – A.7260 [Weinstein]/S.4088 [Sampson]**

This law clarifies that poundage is due to the sheriff upon a settlement when a property execution has been issued and the property levied against.

## **E. ACCESS TO JUSTICE**

The Assembly passed the following bills, which were not acted upon by the Senate:

### **1. Attorney's fees in actions against the state – A.7395 [Schimminger]**

This bill would amend New York's Equal Access to Justice Act of 1989 to restore the Act's original intent, eroded by Federal court decisions, to authorize an award of attorney's fees to litigants who have been wronged by the unjustified actions of New York State agencies.

**2. Jury selection reform – A.2374 [Lancman, Jeffries]**

This bill authorizes the commissioner of jurors of each county to collect demographic information concerning the ethnicity, race, gender, and age of jurors.

**F. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS**

**1. Mortgage Foreclosure Reforms – Chapter 494 – A.40007 [Weinstein]/S.66007 [Klein]**

This law toughens the procedures used during mandatory pre-foreclosure conferences and expands these conferences to cover all residential foreclosure actions involving real property. It requires the new owners of foreclosed buildings to honor existing leases and, if none exist, then the tenant will be able to stay for 90 days. The bill imposes a duty on foreclosing lenders to maintain buildings after being awarded judgment in a foreclosure action.

**2. Tenant Security Deposits – Chapter 225 – A.2500 [Pretlow]/S.2461 [Sampson]**

This law will permit the Attorney General to investigate and recover tenant security deposits.

**3. Notice in Eviction Cases – Chapter 256 – A.1132 [Dinowitz]/S.2350 [Sampson]**

This law will exclude weekends and holidays from the 72 hour notice period prior to an eviction, which will provide tenants with enough time to obtain an attorney.

**4. Stipulations in Eviction Cases – Chapter 281 – A.6017A [Gottfried]/S.3847A [Krueger]**

This law will require a court to fully describe the terms of stipulated court agreements in eviction proceedings when the tenant is not represented by an attorney.

**The Assembly passed the following bills, which were not acted upon by the Senate:**

- 1. Debt Collection Reform – A.7558 [Weinstein]** – The Consumer Credit Fairness Act would shorten the statute of limitations for consumer credit cases from six years to three years; require creditors to submit additional evidence to obtain a default judgment; require additional notice of pending consumer credit actions to be mailed to defendants by the clerk of the court.

2. **Consumer Legal Actions – A.3532 [Gianaris]** – This bill would grant consumers a private cause of action against debt collectors who violate New York law.

## **G. TRUSTS AND ESTATES & POWERS OF ATTORNEY**

1. **Simultaneous Death – Chapter 92 – A.2762A [Weinstein]/S.4030 [Sampson]**

This law would redefine simultaneous death for estate purposes. It treats the death of a relevant person which occurs within 120 hours of the decedent as predeceasing the decedent. This will avoid litigation over this issue.

2. **Power of Attorney – Chapter 4 – A.4392 [Weinstein]/S.1728 [Sampson]**

This law will delay the effective date of the new power of attorney law. The sudden passage by the Senate in December 2008 made a delay in the effective date necessary so practitioners could prepare for the new law.

3. **Surrogate Decision Making Committees – Chapter 12 – A.2003 [Weisenberg]/S.2225 [Huntley]**

This law makes technical corrections to the statute authorizing surrogate decision making committees who act as guardians for certain mentally disabled persons.

4. **Standby Guardians – Chapter 260 – A.6139 [Brennan]/S.2782 [Adams]**

This law will increase the time period within which a court must confirm the appointment of a standby guardian from sixty to one hundred and eighty days.

**The Assembly passed the following bill, which awaits action by the Senate:**

1. **Increased Estate Exemptions – A.8969 [Weinstein]** – This bill would increase the value of estate assets that are reserved for the benefit of the immediate family of a decedent and are directly distributed.

## **H. OTHER LEGISLATION OF INTEREST**

1. **Notice of Claim for 9/11 Injuries – Chapter 440 – A.7122C [Spano]/S.3325B [Stewart-Cousins]**

This law would enable persons who failed to file a timely notice of claim to do so to obtain redress for injuries suffered during the cleanup of the World Trade Center site.

**2. Legal Notices for Richmond County – Chapter 450 – A.8043  
[Cusick]/S.4796 [Savino]**

This law will allow certain newspapers in Richmond County to charge the regular classified advertising rate for the publication of legal notices.

**3. Schenectady Jury Stenographers – Chapter 457 – A.8355  
[McEneny]/S.5554 [Breslin]**

This law will permit the Albany County District Attorney to appoint a Jury Stenographer who resides in any county of the Third Judicial District.

**4. Cortland County Seal – Chapter 242 – A.1674 [Lifton]/S.178  
[Seward]**

This law will enable Cortland County to create a new County Seal.

**5. Location of Court Proceedings – Chapter 364 – A.4710  
[Hawley]/A.1939 [Ranzenhofer]**

This law will allow town court proceedings for the Towns of Elba, Oakfield and Batavia to be held in any of these towns or in the City of Batavia.

**6. Town of Windsor Justice Court Clerk – Chapter 374 – A.7090  
[Crouch]/S.3614 [Libous]**

This law will permit the court clerk for the Town of Windsor Justice Court to reside outside the town.

## IV. HEARINGS

### **Funding for Civil Legal Services**

The Judiciary, Codes, Correction and Governmental Operations committees held a joint hearing on February 24, 2009, to assess the ability of New Yorkers to access the justice system. The committee members heard from the Interest on Lawyer Account Fund (IOLA), the private bar, civil legal services providers and their clients, and examined the challenges facing legal service providers from both a caseload and funding perspective.

Testimony demonstrated that the recent economic downturn and increasing caseloads are causing an ever-increasing strain upon the ability of the civil legal services community, as well as other legal service providers, to serve those in need. Further testimony highlighted that the swift fall in federal interest rates has led to a steep reduction in IOLA revenues that will be available to fund civil legal services.

The testimony revealed that in the six months leading up to the hearing, the number of pending family offense petitions, permanency hearings, eviction proceedings, utility non-payment and unemployment benefit cases had soared; indeed, foreclosure and consumer debt cases were at an all-time high.

After the hearing, the Assembly restored over \$8 million for civil legal services which had been omitted from the Governor's budget.

### **Jury Diversity**

In response to claims that jury pools in certain counties did not properly represent the citizens or reflect the demographics of those counties resulting in certain groups being under-represented, the Judiciary Committee (along with the Codes Committee) held an important hearing in New York City on April 30, 2009. The committee heard testimony from bar association leaders, the Office of Court Administration, a Cornell University Law School Professor and others. Based, in great part, on information presented, the Judiciary Committee reported and the Assembly passed [A.2374](#) (Lancman, Jeffries), which authorizes the commissioner of jurors of each county to collect demographic information concerning the ethnicity, race, gender and age of jurors.

### **Consumer Debt Collection Practices**

On May 14, 2009, the Assembly Judiciary and Consumers committees conducted a hearing to examine consumer protections in the debt collection and debt management industries. The committees heard from concerned parties representing consumers and the debt collection industry. Following the hearing, the Assembly passed a number of bills, described in greater detail above.

**APPENDIX A**

**2009 SUMMARY OF ACTION ON ALL BILLS  
REFERRED TO JUDICIARY COMMITTEE**

<b>Final Action</b>	<b>Assembly Bills</b>	<b>Senate Bills</b>	<b>Total Bills</b>
<b>Bills Reported, With or Without Amendment</b>			
To Floor, Not Returning to Committee	44	0	44
To Floor, Recommitted and Died	0	0	0
To Ways & Means	5	0	5
To Codes	36	0	36
To Rules	22	0	22
<b>Total</b>	<b>107</b>	<b>0</b>	<b>107</b>
<b>Bills Having Committee Reference Changed</b>	<b>1</b>	<b>0</b>	<b>1</b>
To Housing	1	0	1
<b>Senate Bills Substituted or Recalled</b>			
Substituted		5	5
Recalled		1	1
<b>Total</b>		<b>6</b>	<b>6</b>
<b>Bills Defeated in Committee</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Bills Never Reported, Held in Committee</b>	<b>338</b>	<b>8</b>	<b>346</b>
<b>Bills Never Reported, Died in Committee</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Bills Having Enacting Clause Stricken</b>	<b>11</b>	<b>0</b>	<b>11</b>
<b>Motion to Discharge Lost</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL Bills in Committee</b>	<b>457</b>	<b>14</b>	<b>471</b>
<b>TOTAL Number of Committee Meetings Held</b>		<b>15</b>	