



New York State Assembly
2011 ANNUAL REPORT

committee on
JUDICIARY

Helene Weinstein
Chairperson



Sheldon Silver
Speaker

December 15, 2011

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 – 2011

Dear Speaker Silver:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2011 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

2011 ANNUAL REPORT

STANDING COMMITTEE ON JUDICIARY

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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 providing civil legal services to those in need.

The Judiciary Committee tackled many high profile issues in 2011, including mortgage foreclosure reform, consumer protection, responding to the needs of families, allowing for the filing of litigation and real estate filings by electronic means, and responding to sweeping changes in federal estate taxes.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2011.

II. LEGISLATIVE ACCOMPLISHMENTS¹

A. PROTECTING CHILDREN AND FAMILIES

1. Child support obligation of indigent parents - Chapter 436 – A.7520 [O'Donnell]/S.5582 [Savino].

This law permits indigent child support obligors to rebut the statutory presumption of a \$25 per month minimum child support order where such an order would be unjust or inappropriate. It also clarifies the circumstances under which the court is authorized to direct an obligor to contribute towards child care, education and health care expenses in addition to the basic child support order.

2. Work referrals in child support enforcement and modification cases – Chapter 592 – A.7794A [Weinstein]/S.4091B [Savino].

This law permits the court to refer child support obligors to participate in employment and training programs, when they are available, as an additional option for resolving a child support enforcement or modification case.

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

This bill clarifies and expands options for resolution of child protective cases via adjournment in contemplation of dismissal. It also clarifies the procedures for and consequences of the dispositional alternatives of adjournments in contemplation of dismissal and suspended judgments in child protective cases. It did not pass the Senate.

B. PROTECTING VICTIMS OF DOMESTIC VIOLENCE

1. Adding strangulation to the list of actionable allegations in family offense petitions – Chapter 309 – A.7632 [Rosenthal]/S.4302A [Savino].

This law adds strangulation and criminal obstruction of breathing or blood circulation to the list of actionable allegations in family offense petitions.

2. Extending the Judicial Hearing Officer pilot program – Chapter 34 – A.6152 [Bronson]/S.4666 [Nozzolio].

This law extends for three years the pilot program in the seventh and eighth judicial district that authorizes Judicial Hearing Officers in family court to issue ex parte orders of protection in response to petitions filed by domestic violence victims.

¹ All references to chapters, except where otherwise noted, are to chapters of the laws of 2011.

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

This bill limits the scope of information needed in a published name change notice. Instead of a person's birthday, the month and year will suffice. Similarly, instead of a person's address, the person's city and state will suffice. This will limit domestic violence and identity theft. It did not pass the Senate.

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

This bill sets forth the requirements of 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. It did not pass the Senate.

C. MATRIMONIAL LEGISLATION

1. Marriage Equality Act – Chapter 95 – A.8354 [O'Donnell]

This law grants same-sex couples the right to enter into civil marriages in New York.

D. CIVIL PRACTICE²

1. Electronic filing of legal papers (e-filing) – Chapter 543 – A.8368A [Weinstein]/S.5635B [Bonacic].

This law permits the Chief Administrator of the Courts to expand mandatory e-filing to certain counties and types of cases including Tort, commercial and breach of contract cases in New York City and Westchester counties, Surrogate Courts state-wide, automobile No-Fault cases in New York City Civil Court and certain types of cases in Supreme Courts in three counties outside of New York City (subject to existing exceptions for CPLR Article 78, MHL Article 81, matrimonial and election law proceedings). The previous liberal opt-out provisions for pro se litigants and attorneys who cannot litigate electronically are preserved. This law also provides for broad consultation with interested parties including clerks and requires the convening of advisory committees for input on proposals for future expansion of the program into criminal and family courts.

2. Authorizing the City Courts to entertain applications to confirm an arbitration award – Chapter 284 – A.6836 [Zebrowski]/S.4594 [Bonacic].

This law would authorize the City Courts to grant relief in aid of arbitration set forth in the CPLR, such as confirming the award (CPLR 7510), vacating or modifying an award (CPLR 7511), protecting the right to arbitration of a party to an agreement who becomes deceased or otherwise incompetent (CPLR 7512), authorizing inclusion of the arbitrator's fees and

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

expenses in the arbitration award (CPLR 7513), and entering judgment on the award (CPLR 7514).

3. Lien filings for retainage – Chapter 367 – A.5022 [Cusick]/S.3179 [DeFrancisco].

This law would permit a lienor a longer time period within which to file their lien.

4. Constitutional amendment to permit District Court Judges to serve as a Family Court Judge in their Judicial District – Passed Assembly – A.2452 [Lavine]/S.1811 [Lavalle].

This Constitutional amendment would permit district court judges to serve in family court in their judicial district. It did not pass the Senate.

E. ACCESS TO JUSTICE

1. Attorney's fees in actions against the state – Passed Assembly - A.3264 [Schimminger]/S.5131 [Grisanti].

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 even in cases that settle. This bill did not pass the Senate.

2. Access to small claims court for residential tenants – Passed Assembly – A.5037 [Gottfried]/S.441 [Krueger].

This bill would enable tenants to bring small claims actions where the rental unit is located. This bill did not pass the Senate.

F. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS

1. Electronic recording of real property transfers with the County Clerk – Chapter 549 – A.6870 [Latimer]/S.2373A [Stewart-Cousins].

This law authorizes county clerks to electronically record instruments involving real property transfers. The State Office for Technology will be the electronic facilitator.

2. Private Transfer Fee Obligations – Chapter 522 – A.7358A [Morelle]/S.5203A [Libous].

This law prohibits private transfer fees associated with the sale of real property. In addition, effective as of the date of enactment, this law mandates recording of existing private transfer fees and imposes liability for violating the law.

3. Suits against debt collectors – Passed Assembly - A.6674 [Jeffries]/S.4238 [Gianaris].

This bill would permit debtors to sue debt collectors for violations of New York law and would permit debtors to collect any resulting actual damages, reasonable attorney's fees and punitive damages awarded by the court. This bill did not pass the Senate.

4. Foreclosure standing – Passed Assembly - A.629 [Weinstein]/S.697A [Klein].

This bill would ensure that only the actual holder of the mortgage note or their legal representative will have standing to maintain a foreclosure action. It would also preserve the defense of standing to be raised at any time during the foreclosure proceeding. This bill did not pass the Senate.

G. TRUSTS AND ESTATES & POWERS OF ATTORNEY

1. Renunciation and Dispositions – Chapter 285 - A.6837 [Lavine]/S.4584 [Bonacic].

This law would amend the renunciation statute to clarify the effect of the statute on joint tenants and tenants by the entirety.

2. No Contest clauses and discovery – Chapter 286 - A.6838A [Titone]/S.4591A [Bonacic].

This law would clarify the scope of disclosure authorized where a will contains a no contest clause.

3. Formula Clauses and federal taxation – Chapter 529 – A.7729 [Weinstein]/ S.5519 [Bonacic].

This law modifies certain formula clauses to account for changes in federal taxation.

4. Power of Appointment – Chapter 451 – A.8297A [Weinstein]/S.5801 [Bonacic].

This law clarifies the authority of a trustee in regards to a power of appointment and the trustee's authority to invade trust principal.

5. Article 81 Guardians – Passed Assembly - 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. This bill did not pass the Senate.

H. OTHER LEGISLATION OF INTEREST

1. Judicial retirement – Delivered to Secretary of State – A8469 [Weinstein]/ S5827 [Bonacic].

This Constitutional amendment allows for the authorization of retired Court of Appeals judges and Supreme Court justices to serve until age 80. This is first passage.

2. Lapse of oil and gas interests located in Allegany State Park – Chapter 501 – A.408 [Hoyt]/S.2779 [Young].

This law provides the conditions under which oil and gas interests in Allegany State Park that are unused for 20 years will lapse and revert to New York State.

III. PUBLIC HEARING

November 7, 2011 hearing on foreclosure.

On November 7, 2011, the Committees on Judiciary, Housing and Banking held a public hearing to examine the effect of the mortgage foreclosure process on surrounding communities and to assess the impact of state funding for foreclosure prevention. Testimony at the hearing highlighted the importance and success of legislative changes already enacted under the Assembly's leadership, including mandatory settlement conferences. Additional legislative reforms including stronger enforcement mechanisms and stricter procedures for settlement conference laws, and passage of legislation related to standing were urged. Testimony at the hearing from the Office of Court Administration, New York State Banker's Association, research institutes, housing counselors, legal service providers and clients reinforced that services of the Foreclosure Prevention Program are much more effective at avoiding home loss, protecting critical rights of homeowners, saving money and stabilizing neighborhoods. We learned that foreclosure prevention services help avert economic costs to the state and help save the state money. We also learned that these services are critical to the meaningful implementation of the procedural protections mandated by the 2008 and 2009 foreclosure prevention laws that we enacted in New York State. Testimony revealed that it is close to impossible for a homeowner to avert a foreclosure without expert and reliable assistance and that there is no dearth of scams ready to prey on the vulnerabilities of unrepresented homeowners.

The Legislature has provided funding for foreclosure prevention services via appropriations of \$25 million in the 2008-2009 budget and \$21.87 million in the 2009-2010 budget. The Foreclosure Prevention Program, launched with the help of these funds in 2008, has created and sustained a strong network of not-for-profit organizations across the state including housing counselors and legal service attorneys that provide direct foreclosure prevention assistance to distressed homeowners free of charge. This year, the Executive vetoed funding to assist with the operation of this Program but an agreement was reached in December to provide \$1 million in funding to sustain the program through the end of the 2011-12 SFY. The information we received at the hearing makes it clear that failure to restore the foreclosure prevention funding threatens not only to set back the significant gains made via legal protections enacted for distressed homeowners over the past three years, but also promises to unravel the strong networks of service providers essential to the meaningful implementation of the state and federal laws intended for the benefit of homeowners facing foreclosure.

IV. NEW YORK STATE'S JUDICIARY BUDGET

The Office of Court Administration's proposed budget for SFY 2011-12 for the Judiciary General Fund Court and Agency Operations and Aid to Localities totaled \$1.8 billion, a decrease of .02% from SFY 2010-11 Enacted Budget. The all funds proposed budget totaled \$2.1 billion, which was a decrease of .03% from the previous year's appropriation.

The proposed budget included increased funding in the following amounts:

- \$20.2 million for salary increments required by law for non-judicial personnel.
- \$5.71 million related to contractual and workload increases in payments for attorneys representing children in the Attorney for the Child Program.
- \$11.8 million for continued implementation of caseload standards for attorneys assigned to represent criminal defendants in NYC.
- \$4.07 million to meet contractually obligated increases for security services, real estate rentals, computer assisted legal research and contracts for community courts, and court improvement projects.
- \$25 million for civil legal services to address the crisis of the unrepresented identified by the 2010 report from the Chief Judge's Task Force on Civil Legal Services <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>
- \$15 million for the Interest on Lawyer Accounts fund used to support civil legal services.

The proposed budget included decreased spending in the following amounts:

- \$11.52 million in savings related to salary adjustments and lump sum payouts for separation from service.
- \$11.09 million attributable to cost saving measures including reductions in travel, elimination of targeted training programs, legal reference print materials, and temporary service and overtime not directly related to court operations. Additional savings are being realized from the transition to IP telephones, the reduced expansion of redundant wiring for Court-net and stringent control of the purchase of equipment.
- \$46.59 million related to the Vacancy Control Program instituted in 2008-09 and the Early Retirement Incentive Program authorized in 2010.

In addition to the decreases identified above, due to the economy, the State Fiscal Year (SFY) 2011-2012 Enacted Budget included an additional All Funds reduction of \$170 million dollars to the Office of Court Administration's proposed budget as negotiated between the Legislature, Executive, and Office of Court Administration (OCA). This includes a General Fund reduction of \$153.6 million, including a \$12.5 million reduction for civil legal services.

2011 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	29	0	29
TO FLOOR; RECOMMITTED AND DIED	0	0	0
TO WAYS AND MEANS	7	0	7
TO CODES	16	0	16
TO RULES	12	0	12
TO JUDICIARY	0	0	0
TOTAL	64	0	64
BILLS HAVING COMMITTEE REFERENCE CHANGED			
TO <u>codes</u> COMMITTEE	1	0	1
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TOTAL	1	0	1
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, DIED IN COMMITTEE	290	26	316
BILLS HAVING ENACTING CLAUSES STRICKEN	19	0	19
MOTIONS TO DISCHARGE LOST	0	0	0
TOTAL BILLS IN COMMITTEE	374	29	403
TOTAL NUMBER OF COMMITTEE MEETINGS HELD	10		