



**New York State Assembly**

**Sheldon Silver**  
Speaker



# 2013

## ANNUAL REPORT

Committee on  
**Judiciary**

**Helene Weinstein**  
Chair





THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

HELENE E. WEINSTEIN  
Assemblywoman 41<sup>ST</sup> District  
Kings County

DISTRICT OFFICE  
3520 Nostrand Avenue  
Brooklyn, New York 11229  
(718)648-4700

ALBANY OFFICE  
Room 831  
Legislative Office Building  
Albany, New York 12248  
(518)455-5462

CHAIR  
JUDICIARY COMMITTEE

COMMITTEES  
Aging  
Codes  
Rules  
Ways and Means

Court Facilities Capital Review Board

December 1, 2013

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 – 2013**

Dear Speaker Silver:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2013 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 E. Weinstein, Chair  
Assembly Standing Committee on Judiciary

## 2013 ANNUAL REPORT

### STANDING COMMITTEE ON JUDICIARY

Helene E. Weinstein, Chair

#### Committee Members

##### **Majority**

Edward Braunstein  
David Buchwald  
Jeffrey Dinowitz  
Edward Hennessey  
Charles D. Lavine  
Daniel J. O'Donnell  
Dan Quart  
Sean Ryan  
Aravella Simotas  
Phil Steck  
Michele R. Titus  
Matt Titone  
David Weprin  
Kenneth Zebrowski

##### **Minority**

Tony Jordan, Ranking Member  
William A. Barclay  
Al Graf  
Chad Lupinacci  
Michael Montesano  
Claudia Tenney

##### **Staff**

Dan Salvin, 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 E. Weinstein

## TABLE OF CONTENTS

<b>I.</b>	<b>Committee Responsibilities and Priorities</b>	<b>4</b>
<b>II.</b>	<b>Legislative Accomplishments</b>	<b>5</b>
<b>III.</b>	<b>Public Hearing</b>	<b>12</b>
<b>IV.</b>	<b>Judiciary Budget</b>	<b>13</b>

## **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 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, which in 2013 resulted in a number of proposals being placed on the ballot for consideration by the voters.

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 unmet demand for these services, the Judiciary Committee remained a strong advocate for providing civil legal services to those in need. The enacted Judiciary budget for State Fiscal Year 2013-14 included a \$15 million supplemental appropriation for the New York Interest on Lawyer's Account (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. The Assembly also restored its funding for civil legal services in the amount of \$2.65 million and \$609,000 for domestic violence programs in the enacted budget.

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

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

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

### A. PROTECTING DOMESTIC VIOLENCE VICTIMS CHILDREN AND FAMILIES

1. Protection from prosecution for violating own order of protection – Chapter 480 – A.6547-B [Weinstein]/S.5605 [Robach].

This law clarifies that a protected party issued an order of protection in their favor cannot be charged or prosecuted for violating their own protective order.

2. Economic abuse as a form of domestic abuse – Passed both Houses – A.7400 [Weinstein]/S.5821 [Robach].

This bill would add the offenses of larceny, theft and coercion to the jurisdiction of family court where it involves family or household members. This is necessary to address orders of protection and financial issues.

3. Orders of Custody or Visitation where a child is conceived due to sexual offenses – Chapter 371 - A.7188-A [Paulin]/S.5069-A [Skelos].

This law creates a rebuttable presumption that it is not in the best interests of a child conceived due to sexual offenses to have custody or visitation awarded to a parent convicted of such crimes.

4. Accommodation for minors in vacating acknowledgments of paternity – Chapter 402 – A.7375 [Weinstein]/S.4644-C [Bonacic]

This law extends the time period for minors to apply to vacate their paternity acknowledgment in court.

The following bills were passed by the Assembly only:

5. Interpreting orders of protection - A.1084-A [Weinstein]/S.1728-A [Espaillat].

This bill 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.

---

<sup>1</sup> All references to chapters, except where otherwise noted, are to chapters of the laws of 2013.

6. **Child Protective Services Court Proceedings – A.7623 [Weinstein]/S.5203 [Rules].**

In child protective cases this bill facilitates placement of abused and neglected children with familial resources as an alternative to stranger foster care placement by providing for greater notice to and clear avenues for participation by family members and legal guardians.

## **B. CIVIL PRACTICE<sup>2</sup>**

### **1. Retaliatory false filing of financial statements - Chapter 490 – A.8013 [Gabryszak]/S.4042-A [Bonacic].**

This law expands the penalties for filing retaliatory false financial instruments against judges and others involved in the administration of justice. The bill also creates an expedited procedure by which the Courts can remove these false filings from the public record.

### **2. Notice of Claim – Chapter 24 - A.1051 [Weinstein]/S.2155 [Martins].**

This law makes technical changes concerning the filing of a notice of claim against governmental entities.

### **3. Electronic Filing of Claims in Nassau County – Chapter 113 – A.6551 [Lavine]/S.4833 [Martins].**

This law adds the Supreme Court of Nassau County to the list of venues in which the Chief Administrative Judge may require e-filing in certain types of civil actions.

### **4. Alternate Jurors – Chapter 204 – A.6553 [Skartados]/S.5004 [Bonacic].**

In order to prevent mistrials due to jury illness or inability to continue to serve, this law will permit a judge to retain alternate jurors after submission of the case to the jury.

### **5. Abuse of Civil Discovery Process – Chapter 205 – A.6554 [Braunstein]/S.4850 [Bonacic].**

This law will permit a non-party in litigation to seek a protective order from the court in order to prevent the abuse of civil discovery.

### **6. Protect Tort Settlements from Insurer Claims – Passed both Houses - A.7828-A [Weinstein]/S.5715-A [Bonacic].**

This bill would prevent health care insurers from realizing a double-recovery in tort cases at the expense of injured insureds, where insurers have already received premiums for these claims.

---

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

7. **City Court Judges – Passed both Houses – A.6552-B [Morelle]/S.4043-B [Bonacic].**

This bill would provide for additional judgeships in certain City Courts, in addition to expanding certain part-time judicial offices based on the needs of the various cities.

**The following bills were passed by the Assembly only:**

8. **Strategic Lawsuits Against Public Participation - A.856 [Weinstein].**

This bill would expand current protections for persons faced with abusive litigation filed by parties who object to a citizen's participation in matters of public concern.

9. **Prevailing party for counsel fees in action against state – A.2068-A [Schimminger].**

This bill would close a significant loophole in 1989's Equal Access To Justice Act, by facilitating the retention of an attorney for people who may not otherwise be able to afford one, in order to recover damages when the State engages in wrongful conduct.

**C. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS**

1. **Certificate of Merit – Chapter 306 – A.5582-A [Weinstein]/S.4530 [Klein].**

This law requires lenders seeking to foreclose upon residential real property to file a certificate of merit that ensures that they have the legal right to bring a foreclosure claim before the court. This law also prevents lenders from evading existing laws requiring court-supervised mandatory settlement conferences prior to being able to foreclose upon such property.

**The following bills were passed by the Assembly only:**

2. **Consumer Credit Fairness Act - A.2678 [Weinstein]/S.2454 [Savino].**

This bill would reform debt collection litigation by requiring creditors to submit proof of their claims prior to being able to obtain a default judgment. It would also curtail the right to collect consumer debts upon expiration of the statute of limitations which would be reduced from six to three years.

3. **Fraud prevention - A.7953-A [Weinstein]/S.5750-A [Klein].**

This bill provides for a process to notify homeowners and the courts of any surplus funds remaining to enable the Office of Court Administration to reconcile the accounts.

4. **Expedited Insurance Claim Proceedings – A.5570 [Titone]/S.5531 Boyle.**

This bill would ensure expedited court proceedings for a property owner's insurance claims which result from a state disaster emergency, such as Superstorm Sandy.

**D. TRUSTS AND ESTATES AND GUARDIANSHIPS**

1. **Uniform Guardianship and Proceedings Jurisdiction Act – Chapter 427 - A.857 [Weinstein]/S.2534 [Hannon].**

This law creates a roadmap and uniform procedures for interstate adult guardianship cases.

2. **Power of Appointment – Chapter 432 - A.4061 [Weinstein]/S.3789 [Bonacic].**

This law clarifies 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.

3. **Application of Anti-lapse and Class Dispositions – Chapter 348 – A.6555 [Lavine]/S.4852 [Bonacic].**

This law clarifies the application of the anti-lapse statute to multi-generational dispositions and future interests created in testamentary trusts.

4. **Decanting – Passed both Houses – A.7061 [Braunstein]/S.3790 [Bonacic].**

This bill would clarify the law concerning the decanting of an existing trust.

5. **Settlement of Account by Resigning Fiduciary – Chapter 483 – A.7062 [Weinstein]/S.4272 [Bonacic].**

This law would address how accounts must be settled by a resigning fiduciary under certain circumstances.

**The following bill was passed by the Assembly only:**

6. **Article 81 Guardians - A.1928 [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.

## **E. CONSTITUTIONAL AMENDMENTS REPORTED BY THE COMMITTEE**

### **1. Civil service credits for disabled veterans – Second Passage<sup>3</sup> - A.4359 [Thiele]/S.1562 [Lavage].**

This Constitutional amendment that would grant disabled veterans additional civil service points was approved by the voters in November 2013.

### **2. Independent redistricting commission – Second Passage – A.2086 [Silver]/S.2107 [Skelos].**

This Constitutional amendment would establish an independent redistricting commission. This amendment will be voted on in the general election in November of 2014.

### **3. Judicial Retirement – Second Passage – A.4395 [Weinstein]/S.886-A [Bonacic].**

This Constitutional amendment that would allow Supreme Court justices and Court of Appeals judges to serve until 80 years of age, was rejected by the voters on November 5, 2013.

### **4. Electronic Bills in Legislature – Second Passage – A.7868 [Galef]/S.4417-A [Marcellino].**

This Constitutional Amendment would permit the legislature to vote on bills which are presented in electronic form. This amendment will be voted upon in the general election in November of 2014.

### **5. Casino Gambling – Second Passage – A.8068 [Pretlow]/S.5898 [Bonacic].**

This Constitutional Amendment that would authorize up to seven non-Indian gaming facilities in New York State was approved by the voters in November 2013.

### **6. Sewage Facility Debt Limit Exemption – Second Passage – A.3632 [Magnarelli]/S.4065 [Martins].**

This Constitutional Amendment would continue the ability of counties, cities, towns and villages to exclude, from their municipal constitutional debt limit, any indebtedness related to sewage facilities until 2024. It was approved by the voters in November 2013.

---

<sup>3</sup> Amendments to the Constitution must be passed by the Legislature in two consecutive sessions before being presented to the voters for approval.

7. **Adirondack Land Dispute Resolution – Second Passage – A.7684 [Sweeney]/S.4689 [Little].**

This Constitutional Amendment would authorize the resolution of a longstanding dispute between the New York State and private parties involving legal title to more than 200 parcels of land in the Adirondack Forest Preserve.

8. **Adirondack Mining – Second Passage – A.7974 [Sweeney]/S.4688 [Little].**

This Constitutional Amendment authorizes New York State to engage in a land exchange with a mining company, NYCO Minerals Inc., to expand its mining operations into the Adirondack Forest Preserve. It was approved by the voters in November 2013.

**F. OTHER LEGISLATION OF INTEREST**

1. **Uniformity in attorney requirement to file record of criminal conviction – Chapter 283 – A.7460 [Buchwald]/S.5078 [Bonacic].**

This law conforms 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.

2. **Unauthorized practice of law – Chapter 22 - A.197 [Braunstein]/S.2610 [Fuschillo].**

To provide better guidance to the bench and bar, this law clarifies what constitutes unauthorized practice of law.

3. **Montaukett Indians – Vetoed - A.73 [Thiele]/S.769 [Lavelle].**

This bill, which was vetoed by the Governor, would have created a procedure to evaluate the claims of the Montaukett Indians to be acknowledged as a tribe by New York State.

### **III. PUBLIC HEARING**

#### **December 6, 2013 – Raising the Age of Adult Criminal Responsibility**

On December 6, 2013, the Committees on Judiciary, Codes, Children and Families and Education joined by the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus held a hearing to examine the age of adult criminal responsibility in New York and the effects of treating individuals as young as sixteen as adults in the criminal justice system. The Committees and the Caucus examined policies that could be improved to more effectively rehabilitate young offenders while also holding them accountable as delinquents. This hearing also examined the experiences of other states that have recently amended their laws governing the age of adult criminal responsibility and how New York may learn from those experiences.

#### **IV. NEW YORK STATE'S JUDICIARY BUDGET**

The 2013-2014 Judiciary budget includes total appropriations of \$2.6 billion. The court's budget absorbs the next phase of judicial salary increases, 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.

# 2013 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>
<b>BILLS REPORTED WITH OR WITHOUT AMENDMENT</b>			
TO FLOOR; NOT RETURNING TO COMMITTEE	27	0	27
TO FLOOR; RECOMMITTED AND DIED	0	0	0
TO WAYS AND MEANS	10	0	10
TO CODES	27	0	27
TO RULES	9	0	9
TO JUDICIARY	0	0	0
TOTAL	73	0	73
<b>BILLS HAVING COMMITTEE REFERENCE CHANGED</b>			
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TOTAL	0	0	0
<b>SENATE BILLS SUBSTITUTED OR RECALLED</b>			
SUBSTITUTED		1	1
RECALLED		2	2
TOTAL		3	3
BILLS DEFEATED IN COMMITTEE	0	0	0
BILLS NEVER REPORTED, HELD IN COMMITTEE	292	25	317
BILLS NEVER REPORTED, DIED IN COMMITTEE	0	0	0
BILLS HAVING ENACTING CLAUSES STRICKEN	8	0	8
MOTIONS TO DISCHARGE LOST	0	0	0
TOTAL BILLS IN COMMITTEE	373	28	401
TOTAL NUMBER OF COMMITTEE MEETINGS HELD	11		