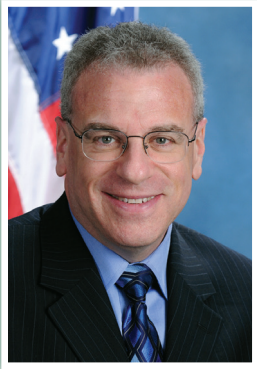


# From the NYS Assembly Judiciary Committee

Summer 2018



**Carl E. Heastie, Speaker • Jeffrey Dinowitz, Chair**  
Legislative Office Building, Room 831, Albany, NY 12248 • [www.nyassembly.gov](http://www.nyassembly.gov)



## Welcome Message From The Chair

Dear Friend,

I write to you with news from the New York State Assembly Judiciary Committee. The 2018 legislative session was my first as Chair of the Committee and enclosed you will find news on all that was accomplished by the Committee and the Assembly during a productive session.

With the legislative session now behind us, bills that passed both houses will be sent to the Governor for his consideration until the end of the year. Bills that are signed will become law. The current status of some of the highlighted legislation can be found along with a summary of each bill below.

Following what was an exciting six months, the Committee plans to have a busy summer and fall with numerous hearings on issues impacting New Yorkers and our judiciary. Before long we will begin preparing for the 2019 session and budget.

I hope you find all of the information contained within both interesting and useful, I look forward to following up in the near future with further updates on pending legislation and the happenings of the Assembly Judiciary Committee. I hope you have a safe and enjoyable summer.

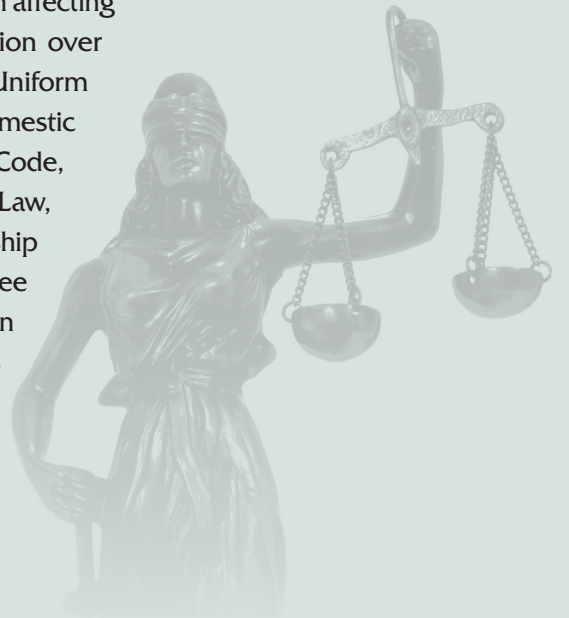
Sincerely,

Jeffrey Dinowitz  
Chair, New York State Assembly Judiciary Committee

## COMMITTEE 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 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, Eminent Domain Procedure Law and Indian 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.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2018.



## PROTECTING DOMESTIC VIOLENCE VICTIMS, CHILDREN AND FAMILIES

### **Relates to codifying the Court Appointed Special Advocates program (CASA) – A.1050-A (Stirpe) / S.2059-A (Bonacic)**

The bill establishes the Court Appointed Special Advocates program (CASA) in statute and codifies existing Office of Court Administration (OCA) rules pertaining to CASA. The CASA program was established by the Office of Court Administration in 1991 under the Task Force on Permanency Planning to promote and support trained community volunteer advocacy programs. **(Passed both houses)**

### **Relates to allowing a person having a lawful order of custody of a child to make medical decisions for such child – A.7928 (Jaffee) / S.6015-A (Avella)**

This bill includes non-parents with lawful orders of custody as a person who can make medical decisions for minors in their care,

and to include non-parents with lawful orders of custody as parents whose consent is not needed for the provision of medical, dental, health and hospital services when, in the judgment of a physician, emergency medical care is needed. **(Passed Assembly)**

### **Relates to the date of the adjustment of the spousal maintenance cap – A.9919 (Joyner) / S.7675 (Bonacic)**

This bill updates the spousal maintenance cap from one hundred and seventy five thousand to one hundred and eighty four thousand and updates the adjustment date to match with the date of adjustment under Social Services Law reducing unnecessary litigation and court costs over any confusion as to what date applies. **(Passed Assembly)**

## PROTECTING TENANTS AND HOMEOWNERS

### **Relates to the presence of a companion animal when executing a warrant for eviction or dispossession of property – A.8684B (Rosenthal) / S.7388-B (Tedisco)**

When a marshal executes an eviction order and takes legal possession of the property located within the evictee's premises, the marshal is required to prepare a written inventory of all items inside, store the items for a specified amount of time, and allow the evicted tenant to later retrieve their belongings. Since animals are considered property under the law, there is no distinction between how a couch and an animal is treated. Unlike couches, animals are living sentient beings, and need food, water, air and affection to survive. This bill would ensure that the safety and wellbeing of an animal is not compromised when a tenant is evicted. **(Passed both houses)**

### **Prohibits commercial leases from including a waiver of the right to a declaratory judgment action – A.10414 (Otis)**

This legislation seeks to enact such a provision as a matter of public policy and restore the right of commercial tenants to cure under a declaratory judgment action as has been the practice since 1968. The ability to cure through this process protects commercial tenants from

landlords seeking to remove tenants in the middle of a lease period without appropriate ability to cure or judicial review. To allow waiver clauses of the Yellowstone injunction will be disruptive of commerce, unfair to commercial tenants and allow landlords to use minor lease issues as a method to remove and replace tenants in the middle of lease terms. Without this legislation, commercial landlords would be able to prematurely terminate leases whenever they wanted to force a tenant out, whether the default was legitimate or not, and the tenant who agreed to a waiver would have no recourse. **(Assembly Third Reading)**

### **Relates to prohibiting pre-payment penalties for mortgages secured by real property owned in a cooperative form of ownership – A.10727 (Dinowitz)**

This bill will forbid prepayment penalties and fees from being charged or collected on a loan or forbearance secured by real property owned in a cooperative form ownership where over fifty percent of the units are shareholder occupied and will make such prepayment penalties unenforceable. **(Assembly Third Reading)**

## ADMINISTRATION OF JUSTICE

### **Authorizes county clerks to establish a system to receive and retain maps utilizing electronic means – A.4127 (Magee) / S.7751 (Marchione)**

The bill amends real property law authorizing county clerks to adopt systems to receive and retain maps using electronic means, saving time and money for county taxpayers. **(Passed both houses)**

### **Relates to a referee's compensation – A.5837 (Lentol) / S.8351 (Golden)**

Generally, a referee is entitled, for each day spent in the business of reference, to fifty dollars unless a different compensation is fixed by the courts or by consent in writing of all parties not in default for failure to appear or plead. It has been increasingly difficult to attract lawyers to take on such appointments because of the low payment. This bill increases the amount from fifty dollars per day to three hundred and fifty dollars and caps the amount at seven hundred and fifty dollars unless the property is sold for fifty thousand dollars or more. **(Passed both houses)**

### **Provides that the attorney-client privilege shall apply to communications between a lawyer referral service and a client – A.9029 (Dinowitz) / S.5845 (Bonacic)**

This bill, which passed both houses, provides that communications between a consumer of legal services and a legal referral service be deemed to be privileged on the same basis as those provided

by law for communications between attorney and client. **(Passed both houses)**

### **Extends provisions of law relating to the use of electronic means for the commencement and filing of papers in certain actions or proceedings – A.10647 (Dinowitz) / S.8416 (Bonacic)**

This measure would extend, from September 1, 2018 to September 1, 2019, a sunset established by chapter 237 of the laws of 2015 as amended by chapter 99 of the laws of 2017 authorizing deployment of mandatory e-filing. **(Passed both houses)**

### **Relates to allowing judicial notice of Google Maps and other web mapping or global imaging websites – A.11191 (Dinowitz) / S.9061 (Gianaris)**

Judicial notice is taken of Google Maps in federal court, as a source that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" pursuant to Rule 201 of the Federal Rules of Evidence. Federal courts have taken judicial notice of images, as well as general locations and distances, provided by Google Maps and Google Earth. There is extensive use of Google Maps to determine distances between two locations, as well as an estimate of walking or driving time between such points provided by Google Maps. This bill will further the interests of justice by allowing litigation to proceed in a timelier manner and will help both plaintiff and defendant to resolve litigation as soon as possible. **(Passed both houses)**

## PROTECTING CONSUMERS IN ARBITRATION

**An act to amend the civil practice law and rules, in relation to grounds for vacating an arbitration award on the basis of partiality of the arbitrator – A.6637 (Titone) / S.8710 (Sepúlveda)**

Currently, a party must prove, either during the course of misconduct by the arbitrator or after an award by an arbitrator is perceived to be unfair, that the arbitrator was biased even if the arbitrator clearly has an economic stake in the outcome of the dispute. This outcome is in direct opposition to the reasons (efficiency and fairness) why arbitration is favored. Arbitration is commonly thought to be a dispute resolution procedure that occurs in front of a neutral third party. This legislation supports and clarifies the original intent of the law. **(Passed Assembly)**

## WORKERS AND CONSUMER PROTECTIONS

**Establishes the right of privacy and the right of publicity for both living and deceased individuals – A.8155-B (Morelle) / S.5857-B (Savino)**

The purpose of this bill is create a right of publicity for deceased and living individuals and a registry to publicly post such interests upon death thereby giving notice to people who may seek to use an individual's right of publicity in New York State for advertising purposes, or for the purposes of trade. In addition this bill addresses the ability of technology to create digital avatars and makes regulations regarding their use. **(Passed Assembly)**

## TRUSTS AND ESTATES AND GUARDIANSHIPS

**Relates to limitations on powers and immunities of executors and testamentary trustees – A.10100 (Dinowitz) / S.6138 (Bonacic)**

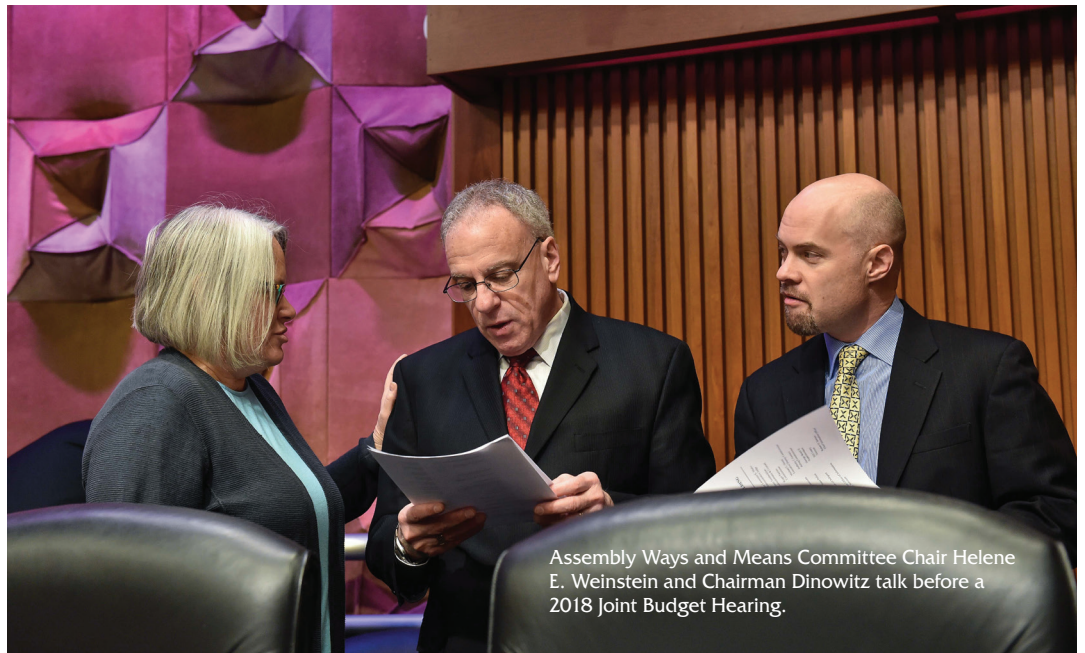
This legislation amends the Estates Powers and Trusts Law to add inter vivos trusts to current law to prohibit inter vivos trustees from having exoneration clauses for failure to exercise reasonable care. **(Passed both houses)**

**Relates to the disqualification of a surviving spouse – A.8325 (Braunstein) / S.6640 (Bonacic)**

The purpose of the bill is to prevent a disqualified spouse from taking a share of a decedent's estate if there has been an annulment of the marriage before or after the death of the decedent. Recently, several court decisions have highlighted a specific type of elder abuse where a person takes unfair advantage of an individual who lacks the capacity to enter into a marriage or otherwise utilizes fraud and undue influence to secretly marry the individual for the purpose of obtaining a portion of his or her estate at the expense of the intended heirs. This bill will close a loophole in the law that allows for the exploitation of a vulnerable elderly individual. **(Passed Assembly)**

## FUNDING NEW YORK STATE'S JUDICIARY

The 2018-2019 State budget adopted without change the Judiciary's budget request in the amount of \$2.23 billion, an increase, in terms of the General Fund Operating Budget, of \$44.4 million, or 2 percent over last year. The courts' budget absorbs statutorily-mandated salary increments for represented non-judicial employees, statutorily-mandated increases for indigent legal defense, supplemental funds for IOLA, a much needed increase in funding for civil legal services to address the crisis in legal services funding. With this year's Judiciary budget, the Office of Court Administration will maintain current staffing levels, filling just a limited number of positions critical to operations, and plans to keep courtrooms open to the public



Assembly Ways and Means Committee Chair Helene E. Weinstein and Chairman Dinowitz talk before a 2018 Joint Budget Hearing.

until 5 p.m. each day. The 2018-19 enacted budget also provided for additional Supreme Court Justices in five judicial districts. The additional justices will be seated in Bronx, Queens, and Richmond Counties as well as in the 9th and 10th judicial districts comprising parts of Long Island and the Hudson Valley.

## RESOLUTIONS REPORTED BY THE COMMITTEE

**Calling for ratification of the Equal Rights Amendment – K.168 (Seawright) (Adopted by the Assembly 05/01/2017)**

This resolution calls for the ratification of the Equal Rights Amendment by members of the U.S. Senate and House of Representatives and asks the Assembly to affirm strong support of the Equal Rights Amendment and a commitment to put the ERA into the Constitution. **(Adopted by the Assembly)**

# LEGISLATURE APPOINTS FIRST FEMALE ATTORNEY GENERAL

On May 8th, New York State's Office of the Attorney General became vacant. In response, the New York State Assembly took action. As required by Public Officer's Law section 41, the State Legislature convened a committee to appoint someone to act as Attorney General for the remainder of the term. The Committee was chaired by Assemblymember Joseph Lentol and included Assemblymember Jeffrey Dinowitz; Assemblymember Crystal Peoples-Stokes; Assemblymember Matthew Titone; Assemblymember William Barclay; Assemblymember Brian Curran; Representatives from the Senate included Senator Kenneth LaValle, Senator Betty Little, Senator Terrence Murphy, Senator Martin Dilan, and Senator Brad Hoylman.

The legislature worked in an efficient, open and transparent manner to fulfill their constitutional duty to fill the vacancy in the Attorney General's office. A bipartisan committee of the legislature interviewed many qualified candidates

to determine how best to carry out the work of the Attorney General's office for the remainder of the year. After the process was completed, Barbara Underwood was selected to serve as Attorney General.



Recently appointed Attorney General Barbara Underwood and Chairman Dinowitz shortly after a Joint Session appointed Ms. Underwood the first female Attorney General for New York

General for New York State, and has an insider's knowledge of the hard work of the office that will serve our state well.

Attorney General Barbara Underwood is a dedicated public servant who has spent her life serving the people of New York State and the country. Over her long and illustrious career, Attorney General Underwood has clerked for Justice Thurgood Marshall on the U.S. Supreme Court, served as a trial attorney in the Manhattan District Attorney's Office, was Acting Solicitor General and Principal Deputy Solicitor General of the United States, as well as Counsel and Chief Assistant to the U.S. Attorney for the Eastern District of New York, and she has argued 20 cases in the U.S. Supreme Court. Most recently, Attorney General Underwood served as Solicitor

## PUBLIC HEARING ON GESTATIONAL SURROGACY – THE CHILD PARENT SECURITY ACT

The hearing provided a synopsis of the current practice of surrogacy with an emphasis on the need to update New York laws. New York is currently one of only six states that do not allow surrogacy agreements. The hearing examined the hardships that many individuals seeking to become parents go through with an emphasis on the unnecessary cost and issues that arise from not having a gestational agreement. It also clarified some of the details of the Child Parent Security Act including the requirement that no gestational carrier may use her own genetic material in the process and the safeguards in place for all parties. Witnesses included legal experts, fertility doctors and advocates who generally supported the bill. The public was invited to submit written testimony.



Bill sponsor Assemblywoman Amy Paulin, Chairman Dinowitz, and Assembly Health Committee Chairman Richard Gottfried hear witness testimony on the Child Parent Security Act

New York State Assembly, Albany, New York 12248

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**NEWS**

**From the  
NYS Assembly  
Judiciary  
Committee**



**Summer 2018**



## IMPORTANT CONTACTS

- **New York State Unified Court System**  
Office of Court Administration, 25 Beaver Street - Rm. 852, New York, NY 10004
- **NYS Unified Court System**  
Office of Court Administration, 4 ESP, Suite 2001, Empire State Plaza, Albany, NY 12223-1450
- **NYC Office: 212-428-2700**
- **Albany Office: 518-453-8650 • [www.nycourts.gov/](http://www.nycourts.gov/)**  
The New York State Unified Court System is the official name of the judicial branch of New York State government. The Court hears on average over 3 million cases per year on a wide array of issues. Such matters involve civil and criminal complaints, family matters, landlord-tenant cases, and trust and estate issues, among many others.
- **NYS Attorney General**  
**The Capitol • Albany, NY 12224 • 1-800-771-7755 • [www.ag.ny.gov](http://www.ag.ny.gov)**  
The New York State Office of the Attorney General mediates and litigates various cases against businesses and individuals engaged in fraudulent, misleading, deceptive or illegal trade practices. The Office pays special attention to patterns of complaints involving the same company, in addition to new and unique issues. Otherwise, the Attorney General's office will direct consumers to the appropriate agency.