

Winter 2019

NEWS

New York Assembly
JUDICIARY COMMITTEE

Carl E. Heastie, Speaker • Jeffrey Dinowitz, Chair
Legislative Office Building, Room 831 • Albany, NY 12248 • www.nyasembly.gov

Message from the Chair



Dear Friend,

With the 2020 legislative session fast approaching, the New York State Assembly Standing Committee on Judiciary has been busy preparing for issues expected to arise in the coming months.

In October, the Committee held a hearing on the rights of children in court. Myself and fellow Assemblymembers heard testimony on the family court system related to custody, visitation, forensic evaluations, and child support cases.

In November, the Committee sponsored two joint hearings with the Senate Judiciary Committee to examine the court consolidation proposal put forth by the Chief Judge of the State of New York. The proposal involves a constitutional amendment and thereby requires passage by both houses twice, i.e. by two legislatures. A summary of the court consolidation proposal is included in this newsletter.

It is my hope that this newsletter will offer some insight into the workings of the Committee and what we plan to address in the near future. Enclosed you will find information on legislation that was reported from the Judiciary Committee and passed the Assembly in 2019. The status of bills are as of December 20th, 2019. Please be sure to note the contact information that may be of use to you.

Lastly, I want to wish you and yours a happy and healthy New Year.

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 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, 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. The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2019. All of the bills below have passed both houses of the legislature unless otherwise noted. Bills will be delivered to the governor for his consideration; or in the case of constitutional amendments, are brought before the legislature again for second passage in the next legislative session.

Public Hearing on the Rights of Children in Court

In recent years, there have been various discussions on ways to improve the New York Court System. One topic of discussion concerns ensuring the rights of children in court. This topic has been addressed in numerous ways, from bills restricting the use of restraints on children in the courtroom to groundbreaking legislation such as “Raise the Age.” Consistent with the Assembly’s determination to protect the rights of children, the Committee held a hearing in October on the court’s role in custody, visitation, and child support cases to analyze the current status of the system and learn where improvements can be made. Custody, visitation and child support cases require an analysis of what is in the best interest of a child. It is also important that those cases be completed in a timely manner. The Committee heard testimony regarding the current use of forensic evaluations and the qualifications of those who decide what is in the best interest of the child in New York’s Family Court System.

Public Hearings on Court Consolidation

New York’s trial court system consists of eleven different trial courts. The Assembly Judiciary Committee held two joint-hearings in November, one in New York City and one Albany, with the Senate Judiciary Committee to consider the advantages and disadvantages of the most recent proposal made by the Chief Judge of the State of New York to consolidate New York’s trial courts. Under the Chief Judge’s consolidation proposal, the court system would have a two-part structure. One part would be a new Supreme Court consisting of the current Supreme Court, County Court, Family Court, Surrogate’s Court, and the Court of Claims. The second part would be a new Municipal Court, consisting of the current District Courts on Long Island, the New York City Civil and Criminal Courts, and the City Courts outside of New York City. This proposal does not include the Town and Village Courts. Please see the next section of the Newsletter for further explanation of the proposal. The Committees heard testimony from the Office of Court Administration, bar associations, judges associations, legal services organizations, and unions that represent court system staff.

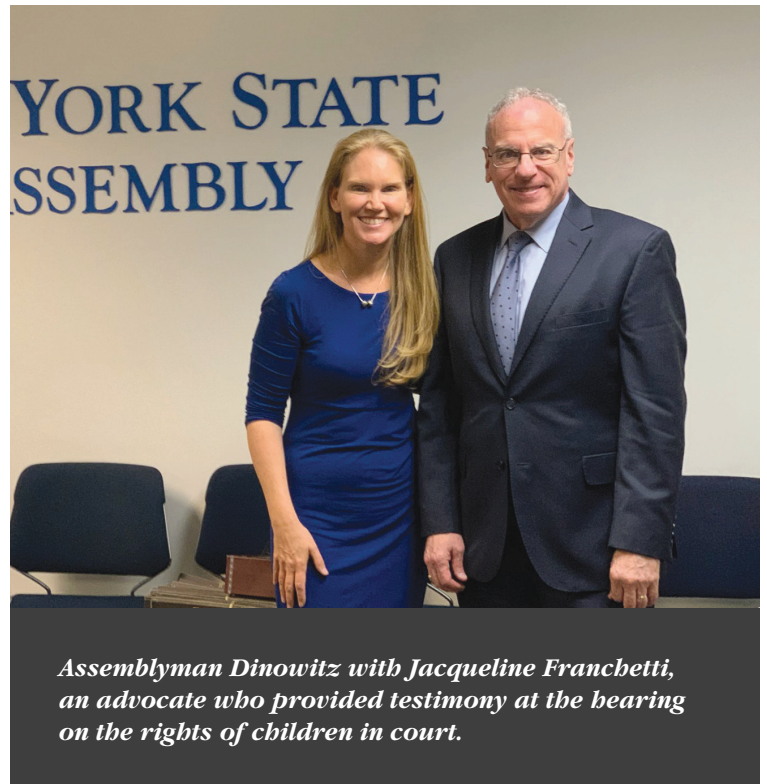
Court Consolidation Proposal Summary:

In September of 2019, the Chief Judge of the State of New York released a Court Consolidation proposal. Through a series of constitutional amendments, the following changes would be made to New York’s court system:

- ***Courts abolished and merged into a newly constituted Supreme Court:***
 - County Court
 - Surrogate’s Court
 - Court of Claims
 - Family Court
- ***The newly constituted Supreme Court would have the following divisions:***
 - Criminal Division
 - Probate Division
 - State Claims Division
 - Family Division
 - Commercial Division
 - General Division
- ***Courts abolished and merged into a newly created Municipal Court:***
 - District courts on Long Island
 - 61 upstate city courts
 - New York City Civil and Criminal Courts

The foregoing changes would be achieved in three stages. The current proposal does not deal with the town and village courts.

With the exception of judges of New York City Housing Court, all judges would continue to attain their position as they do currently, whether by appointment or election.



Assemblyman Dinowitz with Jacqueline Franchetti, an advocate who provided testimony at the hearing on the rights of children in court.

Protecting Domestic Violence Victims, Children & Families

Relates to adoption by a petitioner where such petitioner’s parentage is legally-recognized – A.460 (Paulin)/S.3999 (Hoylman) This Chapter provides that a second parent’s petition to adopt shall not be denied solely on the basis that the petitioner’s parentage is already legally recognized. (*Chapter 258 of the Laws of 2019*)

Relates to name change upon marriage – A.1044 (Simotas)/S.2505 (Kaplan) This bill allows one or both parties to a marriage to elect to change their middle name on their marriage license. (*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.1239 (Jaffee)/S.3248 (Salazar) This Chapter includes non-parents with lawful orders of custody as persons who may make medical decisions for minors in their care. (*Chapter 623 of the Laws of 2019*)

Establishes a time period in which an action to recover damages for injury arising from domestic violence must be brought – A.1945 (Zebrowski)/S.2416 (Kaplan) This Chapter increases the statute of limitation for civil suits related to injury caused by domestic violence to two years. (*Chapter 245 of the Laws of 2019*)

Provides an exemption from jury duty for breastfeeding women – A.5424 (Crespo)/S.748 (Montgomery) This Chapter allows women who are breastfeeding children to be excused from jury service or to postpone jury service for up to two years. (*Chapter 380 of the Laws of 2019*)

Relates to notification of rights of victims of domestic violence in criminal and family court proceedings – A.7395 (Weinstein)/S.6158 (Liu) This Chapter would simplify the language of the notice of rights and expectations that is required to be provided by law enforcement to domestic violence victims. It expands the breadth of the information provided and makes the notice available, at a minimum, in plain English, Spanish, Chinese, and Russian. (*Chapter 663 of the Laws of 2019*)

Relates to the date of adjustment and amount of the spousal maintenance cap – A.7518 (Joyner)/S.5515 (Montgomery) This Chapter would amend the family court act, and the domestic relations law in relation to the date of adjustment, as well as the amount of the spousal maintenance cap. (*Chapter 523 of the Laws of 2019*)

Relates to the notification of allowance for infant support – A.8033 (Seawright)/S.5144-A (Montgomery) This Chapter requires notice to be given to either the parent or legal guardian of the infant, and if there is more than one, to both parents or legal guardians of the infant at the same time when an allowance is made for an infant’s support. (*Chapter 427 of the Laws of 2019*)

Protecting Tenants & Homeowners

Provides for a notice of conveyance of real property to be sent to the owners of record of residential real property – A.440A (Perry)/S.5372 (Comrie) This bill requires county clerks and city registrars, in order to combat conveyance fraud, to send written notice to the owner of a residential property when it is conveyed to another person or entity. (Chapter 641 of the Laws of 2019)

Relates to inspecting, securing, and maintaining vacant and abandoned residential real property – A.1800 (Magnarelli)/S.4182 (Salazar) This Chapter amends the Real Property Actions and Proceedings Law to require that mortgage holders maintain vacant and abandoned residential properties that are part of a homeowners association or co-op. (Chapter 168 of the Laws of 2019)

Establishes the right of tenants to call police or emergency assistance without fear of losing their housing – A.2665A (Lavine)/S.4657A (Hoylman) This Chapter provides legal protections to tenants from collateral consequences such as eviction when they are compelled to contact emergency services for assistance in cases where they are the victims of violence or if they fear violence. This bill also provides protections to tenants who call for emergency service assistance on behalf of other tenants. (Chapter 263 of the Laws of 2019)

Provides that the defense, in a mortgage foreclosure action, of the plaintiff's lack of standing is not waived because of the defendant's failure to raise such defense in his or her responsive pleading – A.5619 (Weinstein)/S.5160 (Kavanagh) This bill amends the Real Property Actions and Proceedings Law to provide that the defense of the plaintiff's lack of standing to bring a residential mortgage foreclosure action is not waived if the defendant fails to raise the defense in a pre-answer motion or an answer to the complaint. This safeguard does not apply after a foreclosure sale unless the judgment of foreclosure and sale was issued on the defendant's default. (Passed both houses)

Directs the department of financial services to establish a website for federal home equity conversion mortgage product comparison – A.5625A (Weinstein)/S.3221 (Sanders) This bill directs the Department of Financial Services to create a new website that will provide to seniors a comparison of federal home equity conversion reverse mortgage products offered in the state. (Vetoed, memo 173)

Provides for the regulation of federal home equity conversion mortgages – A.5626 (Weinstein)/S.4407 (Gounardes) This bill regulates reverse mortgages issued under the Federal Home Equity Conversion Mortgage for Seniors Program. It protects seniors from unfair or deceptive practices, by requiring authorized lenders to provide more information about their products, and to provide consumer protection material. (Chapter 581 of the Laws of 2019)

Administration of Justice

Provides, in tort cases where one defendant has settled, that the remaining defendants must elect prior to trial how the settlement amount will be applied to reduce the remaining defendant's liability – A.2372 (Dinowitz)/S.6081 (Hoylman) This bill is intended to encourage pre-trial settlements in multi-defendant torts litigation. Non-settled defendants are required to elect before opening statements the method by which any settlement amounts is to be offset against the verdict. (Passed both houses)

Relates to the statute of limitations for public water suppliers to commence an action for injury to property – A.5477C (Thiele)/S.3337C (Gaughran) This Chapter changes the statute of limitations for bringing lawsuits against polluters of groundwater supplies by public and wholesale water suppliers thereby better protecting the public against contamination of that critical resource. (Chapter 442 of the Laws of 2019)

Relates to small claims court jurisdiction – A.7525 (DenDekker)/S.6417 (Gianaris) This bill raises the monetary jurisdiction of small claims courts in the New York City Civil Court system from \$5,000 to \$10,000. This will make it possible for more persons to use the small claims process to resolve disputes. (Chapter 664 of the Laws of 2019)

Relates to raising the value of a small estate – A.7571A (Dinowitz)/S.4951A (Sepúlveda) This bill amends the Surrogate's Court Procedure Act to raise the value of a "small estate" from \$30,000 to \$50,000. This change reflects the increase in values of estates resulting from inflation and reduces the cost for people to administer "small estates" using a \$1.00 "do-it-yourself" program provided by the court system. (Chapter 557 of the Laws of 2019)

Extends provisions of law relating to the use of electronic means for the commencement and filing of papers in certain actions or proceedings – A.7969 (Dinowitz)/S.6256 (Hoylman) This Chapter extends for another two years provisions related to the use of electronic means for the commencement and filing of papers in certain actions and proceedings. (Chapter 212 of the Laws of 2019)

Workers & Consumer Protections

Increases the applicability of the plain language law to consumer contracts involving amounts up to \$250,000 – A.2653A (Dinowitz)/S.3704 (Kavanagh) This Chapter increases the monetary exclusion on the requirement of plain language in consumer contracts. (Chapter 363 of the Laws of 2019)

Relates to voiding and rendering unenforceable contract provisions limiting certain speech by contractees – A.3548 (Dinowitz)/S.2455A (Krueger) This Chapter prohibits contractual provisions which limit or waive the consumer's right to make any statement regarding the seller or lessor, and allows for penalties against violators. (Chapter 498 of the Laws of 2019)

Requires the inclusion of instruction in ethical business practices and recent legal matters in the continuing education requirements for real estate licensees – A.6082 (Dinowitz)/S.3839 (Hoylman) This Chapter expands the continuing education for real estate licensees to require two and a half hours pertaining to ethical business practices and one hour pertaining to legal updates. (Chapter 392 of the Laws of 2019)

Trusts and Estates & Guardianship

Makes certain technical amendments to the estates, powers, and trusts law and the surrogate's court procedure act to reflect the provisions of the marriage equality act – A.5604 (O'Donnell)/S.300 (Hoylman) This Chapter amends the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act to reflect the provisions of the Marriage Equality Act by using gender neutral designations. (Chapter 420 of the Laws of 2019)

Relates to testamentary disposition to trustee under, or in accordance with, terms of existing inter vivos trust – A.7519 (Stirpe)/S.5513 (Hoylman) This Chapter clarifies the Estates, Powers and Trusts Law with respect to testamentary dispositions to trustees of an inter vivos trust in accordance with the terms of a will. The new law makes it clear that an inter vivos trust will be deemed created even if not funded as long as the testator identifies the trust in his or her will and executes the trust document prior to executing the will, provided that at least one trustee executes the trust document prior to the death of the testator. (Chapter 352 of the Laws of 2019)

Relates to the commissions of donees of a power in trust, including donees of a power during minority – A.7522 (Buchwald)/S.5512 (Hoylman) This bill amends the Surrogate's Court Procedure Act to regulate how commissions are to be computed and paid to donees of a power in trust including donees of a power during minority. Currently, the statute addresses only the commissions of trustees. (Chapter 601 of the Laws of 2019)

Relates to the privilege between a personal representative and the attorney to lifetime trustees – A.7601 (Dinowitz)/S.6409 (Gaughran) This Chapter establishes that a lifetime trustee is a "personal representative" and is therefore protected by the attorney-client privilege extended to other fiduciaries. The law also provides that the fiduciary's testimony that he or she has relied on the attorney's advice does not by itself constitute a waiver of the attorney-client privilege. (Chapter 529 of the Laws of 2019)

IMPORTANT CONTACTS

New York State Unified Court System Office of Court Administration

Albany:

4 ESP, Suite 2001
Empire State Plaza
Albany, NY 12223-1450
518-453-8650

New York City:

25 Beaver Street, Room 852
New York, NY 10004
NYC Office: 212-428-2700
<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

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. When appropriate, the Attorney General's office will direct consumers to the appropriate agency.

Amendments to the State Constitution

Removes ten day advance voter registration requirement – A.777 (Carroll)/S.1048 (Gianaris) This bill removes the ten day advance voter registration requirement. *(Passed both houses)*

Authorizes ballot by mail by removing cause for absentee ballot voting – A.778 (Vanel)/ S.1049 (Comrie) This bill authorizes ballot by mail by removing cause for absentee ballot voting. *(Passed both houses)*

Relates to the right to clean air and water and a healthful environment – A.2064 (Englebright)/S.2072 (Carlucci) This bill provides that people have a right to clean air and water and a healthful environment. *(Passed both houses)*

Relates to the jurisdiction over the classes of actions and proceedings which shall be originated in the New York City Civil Court – A.7714 (Dinowitz)/S.6346 (Sepúlveda) This bill would increase the monetary jurisdiction of the New York City Civil Court from \$25,000 to \$50,000. *(Passed both houses)*

Resolutions Reported by the Committee

Calling for ratification of the Equal Rights Amendment – K.77 (Seawright) 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)*

New York State Assembly, Albany, New York 12248



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