

NEW YORK CITY BAR ASSOCIATION

**NEW YORK
CITY BAR**

NEW YORK STATE LEGISLATIVE AGENDA

#BarOfHope



2022

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2022 NEW YORK STATE LEGISLATIVE AGENDA

INTRODUCTION

Upon taking office, City Bar President Sheila S. Boston identified six priorities built around her vision of a **Bar of Hope** that would rise to face the unprecedented challenges confronting New York and the Nation. Those priorities are:

1. COVID-19 Recovery Projects
2. Criminal Justice Reform
3. Access to Justice
4. Diversity, Equity and Inclusion
5. Protection of the Rule of Law
6. Mental Health and Wellness

The City Bar's **2022 New York State Legislative Agenda** draws on these priorities and is rooted in our mission to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest. The agenda focuses on positions relevant to the current legislative debate or of particular importance to the City Bar, as well as legislative proposals drafted by our committees. The City Bar's committees generate dozens of reports over the course of each legislative session and this agenda represents only a portion of those positions.¹ For a full directory of City Bar reports, including positions on regulatory changes and our federal and international work, please visit our website.²

¹ To further explore the agenda, please visit <http://www.nycbar.org/issue-policy/issue/new-york-state-legislative-agenda>.

² Available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

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THE JUDICIARY, THE PROFESSION AND THE FAIR, EFFECTIVE ADMINISTRATION OF JUSTICE

Support Adequate Funding for Civil Legal Services in the Judiciary Budget

The City Bar is deeply committed to increasing access to justice and ensuring adequate resources for our justice system.³ We applaud the Judiciary’s annual allocation of \$100 million to fund civil legal services for low-income New Yorkers who face threatened loss of the essentials of life. The City Bar Justice Center, the City Bar’s nonprofit affiliate, annually delivers free legal assistance to more than 24,000 low-income New Yorkers from all five boroughs through limited and full scope legal representation, and tens of thousands of other New Yorkers are helped through the Justice Center’s significant community outreach and education efforts. The Judiciary’s commitment to stable funding for civil legal services has been and will continue to be vital for the Justice Center and the civil justice providers in New York. The need for this funding has only become more apparent as New York continues to address the COVID-19 pandemic and its devastating impact. This devastation has manifested in even greater need for civil legal assistance addressing unemployment and other public benefits; small business dislocation; landlord/tenant and other housing issues; and consumer credit problems. In short, the pandemic confirmed both the need for nonprofit civil legal services like those provided by the City Bar Justice Center and other providers – as well as the importance of cross-leveraging subject matter expertise to creatively address new needs. The Judiciary’s commitment to funding civil legal services translates into healthier and more stable communities, homes and families, it reduces the presence of unrepresented parties in court or keeps cases out of court altogether, and it helps to access and obtain federal benefits.

Simplify New York State’s Courts through Restructuring

The City Bar has long supported proposals to simplify the state’s major trial courts, in the firm belief that a truly unified court system will be more efficient and will result in justice that is more equitable, swifter and less expensive than that which is dispensed via the current patchwork of courts. We see restructuring as an absolutely essential reform for the benefit of both the court system and the public. It will eliminate confusion and waste and create a much more nimble, efficient and user-friendly system. On November 21, 2019, former City Bar President Roger Juan Maldonado delivered testimony in support of restructuring before the New York State Senate and Assembly Judiciary Committees that focused primarily on two issues: how court restructuring would benefit, in particular, low-income litigants in New York City Housing Court and how lawyers, judges, court administrators and bar associations need to work together in order to enhance the diversity

³ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-to-the-chief-judges-statewide-2021-civil-legal-services-hearing>.

pipeline into the profession (and, by extension, onto the bench).⁴ Mr. Maldonado discussed the work of the City Bar's Office for Diversity and Inclusion, the publication of the "Sealing the Leaks: Recommendations to Diversify and Strengthen the Pipeline to the Legal Profession" report⁵ and the work of the Task Force on Civil Right to Counsel.⁶ **Reissued from 2020 NYS Legislative Agenda.**

**CITY BAR
PROPOSAL**

Reform and Modernize the Administration of Class Actions in New York's Courts

The City Bar supports amending Article 9 of the Civil Practice Law and Rules to reform and modernize the administration of class actions in New York's courts.⁷ In 1975, New York enacted its current Article 9 for class actions, but the statute has not been materially changed since. Generally, the amendments would: (1) permit class certification for actions demanding a statutory penalty or minimum measure of recovery; (2) amend language which disfavors class actions against governmental entities; (3) adopt language stating that motions for class certification be made "at an early practicable time" rather than within 60-days; (4) provide guidance with specified factors to be considered in appointing class counsel; and (5) provide a more flexible notice provision concerning discontinuance, dismissal or compromise of the class action. **Reissued from 2020 NYS Legislative Agenda.**

Permit Nonresident Attorneys to Practice in New York without Maintaining a Physical Office in State

The City Bar supports the repeal of Judiciary Law § 470 in order to permit attorneys to be licensed to practice in New York without maintaining New York residency or office space.⁸ Under Judiciary Law § 470, an attorney licensed in New York who maintains an office in state may practice in New York even if they are out-of-state residents. The New York Court of Appeals has explicitly interpreted this rule to mean that a nonresident attorney who wishes to practice in New York must be both licensed to practice in New York and have a physical office in New York. At the time of its enactment, the logic behind the rule was that it helped ensure personal service on a nonresident attorney. However, the Court of Appeals has

⁴ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/court-restructuring-in-ny-joint-public-hearing-testimony>.

⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/sealing-the-leaks-recommendations-to-diversify-and-strengthen-the-pipeline-to-the-legal-profession>.

⁶ See <https://www.nycbar.org/member-and-career-services/committees/civil-right-to-counsel-task-force-on>.

⁷ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-legislation-to-reform-and-modernize-the-administration-of-class-actions-in-new-yorks-courts>.

⁸ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/judiciary-law-470-repeal-nonresident-attorneys>.

acknowledged there are enough measures already in place outside of Judiciary Law § 470 to ensure proper service on a nonresident attorney, thus rendering Judiciary Law § 470 obsolete. The New York Court of Appeals interpretation has also spawned new motion practice gamesmanship, costing litigants' needless legal expense, wasted time, and no tactical advantage. Moreover, compliance with the current law is financially burdensome for nonresident attorneys and thus, again, increases clients' legal expenses without providing any clear benefit. With modern technology, the presence of a physical office address is not a determining factor of successful or professional representation. **Reissued from 2020 NYS Legislative Agenda.**

GOOD GOVERNMENT

Replace the Joint Commission on Public Ethics (JCOPE)

Since JCOPE was created in 2011, the City Bar has issued a series of reports on the commission's structure and the manner in which it hinders effective administration of the state's ethics laws. Most recently, our Government Ethics and State Affairs Committee issued a ten-year report on JCOPE.⁹ The report found that JCOPE's overall mission continues to be hampered by these structural flaws, principally, a lack of independence of commission members, a lack of transparency, and special voting rules for enforcement actions. The City Bar has supported a constitutional amendment that abolishes JCOPE and replaces it with new body (A.1929 (AM Carroll) / S.855 (Sen. Krueger)),¹⁰ as well as more modest reforms, such as those outlined in legislation that address apportionment of the appointment power and the special voting rules (S.6964-A (Sen. Biaggi)).¹¹ The City Bar believes that, absent a constitutional amendment, more ambitious reforms can and should be made by statute now to completely revamp ethics oversight in the state. These statutory changes should include reducing the oversized 14-member commission to a more workable size, revising the appointment method to curb the influence of the regulated parties over the commission members, making the commission (like any other state agency) subject to the state's transparency laws, and eliminating all special voting rules so that the commission can act by simple majority vote in all matters.

Reform the Open Meetings Law to Permit Hybrid Format

The Open Meetings Law exists to ensure that the public can observe and participate in the decision-making of democratic government. As a result of the COVID-19 pandemic, local governments, including New York City, have held open meetings and public hearings via

⁹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ten-years-in-is-there-still-hope-for-jcope>.

¹⁰ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-creation-of-a-nys-government-integrity-commission>.

¹¹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/jcope-reform-voting-rules-and-appointment-method>.

video conference technology, first pursuant to Emergency Executive Order 202.1 and, after its expiration, pursuant to temporary legislation. This experiment demonstrated that New York City government agencies were generally able to hold such meetings using these now widely available technologies and that these technologies may make it easier for some members of the public to attend (e.g., those with disabilities, obligations of childcare, or who are unable to leave their place of work at the time of the open meeting). However, not everyone has access to the resources and know-how to attend open meetings via video conference, and the ability of some people to participate in real time by video conference may be circumscribed. For these reasons the City Bar encourages the adoption of legislation amending the Open Meetings Law to require such meetings to be held in a hybrid format (where the public may attend either in person or by video conference), to permit members of a governmental body holding such a meeting to attend via video conference, and to provide for financial and/or technological assistance to local governments as needed to implement such requirement.¹²

Build upon Reforms to Further Modernize and Secure New York's Voting System and Election Law

Voting Reform. While we applaud efforts over the past few legislative sessions to adopt crucial voting and election law reforms, the past year has shown us there is more work to be done.¹³ Providing New Yorkers full access to the voting booth without unnecessary hurdles will ensure they can make their voices heard and support policies that best reflect their beliefs. New York elected officials should continue to build upon the reforms they have adopted. The City Bar supported the constitutional amendments to permit “no excuse” absentee voting and Election Day registration that were rejected by voters in November 2021.¹⁴ We would urge the Legislature to take steps to adopt the spirit of these initiatives until the constitutional amendments can be presented to voters again.

Election Law Enforcement Reform. We encourage the Legislature to adopt comprehensive civil penalties for all Election Law violations and streamlined administrative enforcement procedures, as well as more reporting of enforcement activity. Finally, the current state Board of Elections (BOE) consists of four members, two Democrats and two Republicans, and most Board employees involved in the registration and election process are chosen by those two parties. As a result of this governing structure, the BOE is virtually always at an impasse and, therefore, unable to act effectively. The two-party system for Board members

¹² See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/hearing-on-the-covid-19-impact-on-the-open-meetings-law>.

¹³ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/american-right-to-vote-election-reform-laws>.

¹⁴ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ballot-proposals-new-york-statewide-election-november-2021>.

and employees should be abolished and the Board should become a five-member, non-partisan board.¹⁵

CRIMINAL JUSTICE REFORM

Advance Policies to Address Mass Incarceration

The City Bar has compiled a thorough report that details several key areas of focus and comprehensive policy recommendations to reduce mass incarceration across New York State.¹⁶ The report calls on legislators to implement sweeping revisions to the criminal justice system, so that its central purpose is to address the root causes of crime and more effectively and compassionately prevent further crime. In the belief that comprehensive, thoughtful reform will make communities safer, the report recommends: (1) arresting fewer people; (2) arraigning fewer people; (3) convicting fewer people; (4) sending fewer people to prison; (5) reducing prison sentences; (6) reforming prisons; and (7) reforming parole. The report cites to a numbers of pending bills and offers recommendations for new legislation (including the other criminal justice proposals included in this agenda) that work towards achieving those recommendations. The City Bar plans to support these and other measures that may be introduced that will help reduce mass incarceration in New York.

CITY BAR PROPOSAL

Enact the Second Chance Amendment

The Second Chance Amendment would make certain applicants eligible for modification of their prison sentences (S.1179 (Sen. Bailey)).¹⁷ Criminal Procedure Law § 440.20 permits defendants to petition the court to set aside a sentence on the grounds that it was invalid as a matter of law. The Amendment would allow for defendants to make a motion to have their sentences reduced or modified on the grounds that it is excessive, or “greater than necessary to achieve the purposes of sentencing.” Defendants would be permitted to offer evidence such as medical condition, confinement record, and age. By providing an outlet by which indicators of rehabilitation could justify release, the Amendment would incentivize good behavior and participation in rehabilitative programming. *Reissued from 2020 NYS Legislative Agenda.*

CITY BAR PROPOSAL

Create a First-time Felony Diversion Court

The City Bar has proposed legislation to create a diversion court for individuals facing their first felony conviction who are not suffering from substance use disorder and therefore

¹⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/safeguarding-new-yorks-elections-post-moreland-commission>.

¹⁶ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/a-pathway-out-of-mass-incarceration>.

¹⁷ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-second-chance-amendment-report-in-support>.

would not qualify for the current drug diversion court.¹⁸ Judges, prosecutors, and defense counsel have recognized the need for first-time felony diversion, with informal versions of such programs based exclusively on prosecutorial consent being implemented across the state. However, only a few individuals benefit as existing programs are generally piecemeal and based upon prosecutorial consent. Through our proposed diversion court, qualifying individuals would receive individualized programming, and, upon successful completion, would have their case dismissed. The program would allow individuals charged with a felony who have not previously been convicted of a felony to receive individualized services. The goal of the program would be to address the root causes of the individual's criminal activity by providing services such as education, job training and placement, therapy, and housing. If the individual completes the program, their case would be dismissed and sealed. By lowering recidivism rates and preventing the lifelong collateral consequences that follow a felony conviction, this program would be beneficial for individuals, as well as their families and communities.

**CITY BAR
PROPOSAL**

Clarify Registration Requirements for Individuals Convicted of Level One Sex Offenses from Out of State

The duration of the registration and verification requirements for individuals convicted of sex offenses are established in Correction Law § 168-h. For a person who is classified as being at low risk to reoffend, the duration of the registration requirement is 20 years, measured from “the initial date of registration.” However, the phrase “initial date of registration” has been interpreted inconsistently with respect to individuals who first registered in another state before moving to New York. The purpose of the proposed amendment is to bring fairness and uniformity to the time a person must spend on the registry, regardless of the state where they may have initially registered. With this amendment – which will impact only level one offenders - 20 years will mean 20 years, with the clock starting when the person first registers in any jurisdiction. This change is consistent with how judges have ruled on the issue when the individual is fortunate enough to have counsel.

HOUSING AND HOMELESSNESS

Expand the Right to Counsel for Tenants Facing Eviction Statewide

In 2017, New York City adopted a first-of-its-kind “right to counsel” (RTC) law, which is proving to be a game-changer in Housing Court.¹⁹ New York’s RTC program has resulted in tenant representation going up, evictions going down, default judgments against tenants

¹⁸ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/creating-a-first-time-felony-diversion-court>.

¹⁹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/evictions-and-racial-discrimination>.

being dropped, and those tenants with counsel being far more successful in being able to retain their homes. It's leveling the playing field in Court, giving people a fighting chance to assert their legal rights, and sending a message that the lives and homes of New York City's low-income households and litigants of color are entitled to be treated with dignity and respect. Legal representation is an important part of the solution to an eviction crisis. For the same reasons we supported the New York City law, the City Bar supports the extension of the right to counsel statewide.²⁰

Provide Internet Access to Individuals Living in Temporary Housing throughout New York State

We support legislation that would provide internet access to individuals residing in temporary housing throughout New York State (A.8552 (AM Reyes) / S.3593-A (Sen. Biaggi)).²¹ Since May 2020, with the release of the City Bar Justice Center's report, "Homeless Need Internet Access To Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,"²² the City Bar and Justice Center have issued multiple reports and advocated for reliable internet access to be available to shelter residents. New York's shelters are overwhelmingly lacking internet access, an essential service which could reduce the length of residents' stays and facilitate their exit into permanent housing. This digital divide is not a new problem, but it has only grown more severe since the COVID-19 pandemic. The legislation would cover State-funded temporary housing, including but not be limited to family shelters, shelters for adults, domestic violence shelters, runaway and homeless youth shelters, and safe houses for refugees. This legislation would represent a significant step forward by ensuring that all shelter residents across New York State are guaranteed reliable internet access.

Increase Needs Allowance for Residents Living in Shelters Serving Meals

The City Bar supports legislation that would increase the cash grant provided to a particular subset of New Yorkers experiencing homelessness, those individuals and families living in shelters which serve three meals a day (A.8061 (AM L. Rosenthal)).²³ The amended law would increase the "personal needs" and "special needs" allowances for these shelter residents, with abysmally low cash levels set over 20 years ago, and provide public assistance to this population at the same levels established for those who reside in facilities that do not serve meals. The need for cash aid is the same for shelter residents whether they receive

²⁰ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/office-of-civil-justice-rtc-testimony>.

²¹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>.

²² See <https://www.citybarjusticecenter.org/wp-content/uploads/2021/07/Wifi4Homeless-2021-Report.pdf>.

²³ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/increase-needs-allowance-for-homeless-living-in-shelters-serving-meals>.

meals or not, particularly in this time of great economic hardship. An increase to the needs allowances would mean that children living in shelters, their parents, and other individuals experiencing homelessness would for the first time in years receive a cash grant that will enable them to purchase many of the important items needed for personal hygiene, including diapers, shampoo, menstrual products, over the counter medicine, and other necessities, such as clothing and laundry-related products.

BUSINESS AND CONSUMER AFFAIRS

**CITY BAR
PROPOSAL**

Regulate the Use of Noncompete Agreements for Lower-Salary Employees

New York now stands alone as an outlier in trade secrets law. Federal law under the Defend Trade Secrets Act and the laws of 49 states under their versions of the Uniform Trade Secrets Act impose statutory requirements and restrictions on trade secrets issues—except in New York, the lone remaining common law jurisdiction in the country. New York has no statutory law generally concerning trade secrets or noncompete agreements. The City Bar proposes a limited—but important—change to New York’s unique status as a common law jurisdiction—namely, enactment of a statute to regulate the use of noncompete agreements as applied to lower-salary employees in order to ensure equity and fairness in employment markets while preserving New York’s traditional role as the nation’s commercial leader.²⁴ More formal guidelines and standards are necessary to ensure fairness in the application of noncompete agreements that can have profound consequences for employees and for regulation of the employment market.

Support Long-Established Practices of Business-to-Business Arbitration Proceedings

The City Bar recommends amendments to pending legislation that would change New York’s regulation of business-to-business arbitration proceedings in a way which would disrupt long-established arbitration practices and could introduce considerable uncertainty in the resolution of numerous business-to-business disputes in New York.²⁵ In particular, we urge the Legislature to support a central pillar of New York arbitration law, i.e., that parties get to decide the contours of their own arbitration process. To the extent policymakers seek to address concerns regarding disparate bargaining power in arbitration, such as in the context of adhesion contracts between companies and consumers, or employment matters, those situations can and should be addressed in a way that does not disrupt decades of New York jurisprudence promoting party autonomy in business-to-business arbitration. **Reissued from 2020 NYS Legislative Agenda.**

²⁴ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/regulating-the-use-of-noncompete-agreements-for-lower-salary-employees>.

²⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/legislative-recommendations-on-business-to-business-arbitration-proceedings>.

Combat Cruel Commercial Companion Animal Breeding

The City Bar supports amendments to New York's Agriculture and Markets Law and General Business Law that would ban pet shop sales of puppies, kittens and rabbits (A.4283 (AM L. Rosenthal) / S.1130 (Sen. Gianaris)).²⁶ If enacted, New York would join over 300 cities, local governments and states across the country that have enacted pet store animal sales bans. Specifically, the proposal aims to curb sales of animals produced in large-scale commercial breeding facilities -- commonly known as "puppy mills" and kitten and rabbit factories -- that mass-produce animals with little regard for animal welfare. Animal mills and factories have generally been regulated in two ways: by regulating the mills and factories themselves, an approach which the federal government has taken; and by attempting to regulate the distributors, particularly pet stores. Neither has been effective in reducing or eliminating the problems at many commercial breeding facilities, which include overcrowding and unsanitary conditions, lack of adequate food, water, socialization, and veterinary care, and inadequate protection from the cold or heat. Live animal sales comprise only a small fraction of the money spent in the pet industry. Pet stores across the country are updating their business models, no longer selling animals from commercial breeding facilities and instead offering pets for adoption and focusing sales on pet-related products and services, like grooming and boarding. We believe New York's industry should do the same.

Enact the Consumer and Small Business Protection Act

The City Bar supports the Consumer and Small Business Protection Act (CSPA) (A.2495-A (AM Niou) / S.6414 (Sen. Comrie)).²⁷ The CSPA would amend New York General Business Law § 349 ("GBL § 349"), which currently prohibits deceptive business acts and practices, to (1) expand conduct prohibited by the statute to include unfair and abusive business acts and practices; (2) eliminate the judicially imposed requirement of consumer-oriented conduct; (3) award reasonable attorney's fees to a prevailing plaintiff; (4) define "person" broadly and codify current New York organizational and third-party standing; (5) permit class actions for actual, statutory and punitive damages; and (6) recognize standing for organizations that test products and services for compliance with GBL § 349. We support the CSPA because "time and again, lawyers practicing in this area see low-income individuals and small businesses sued for financial obligations resulting from unfair and abusive business conduct. By not broadly prohibiting [these] business practices, New York lags behind most states in protecting its consumers and small businesses." Prohibitions in other states have been used to combat unfair terms in adhesion contracts, high-pressure sales tactics, charging unconscionable collection fees, and taking advantage of homeowners with poor credit. In addition to protecting New York's most marginalized communities, the CSPA will protect

²⁶ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-nys-ban-on-pet-shop-animal-sales-report>.

²⁷ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-of-consumer-and-small-business-protection-act>.

small business owners, who, like consumers, are sometimes preyed upon. This will help to ensure a fairer marketplace for businesses large and small. In particular, the CSPA will increase the ability of non-profit organizations to hold businesses accountable for making misleading marketing representations regarding animal welfare, something of increasing concern to consumers.

To further explore the 2022 New York State Legislative Agenda and learn about the related reports and legislation, please visit our agenda webpage at <http://www.nycbar.org/issue-policy/issue/new-york-state-legislative-agenda>.