NEW YORK CITY BAR ASSOCIATION

NEW YORK STATE LEGISLATIVE AGENDA

2024

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2024 NEW YORK STATE LEGISLATIVE AGENDA

The City Bar's **2024 New York State Legislative Agenda** 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.[1] 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. For a full directory of City Bar reports, including positions on regulatory changes and our local, federal and international work, please visit our website.[2]

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[1] To further explore the agenda, please visit https://www.nycbar.org/issues/new-york-state-legislative-agenda/.

[2] *See* https://www.nycbar.org/reports/.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 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 & THE FAIR, EFFECTIVE ADMINISTRATION OF JUSTICE

REPEAL THE CONSTITUTIONAL CAP ON SUPREME COURT JUSTICES & ADOPT A MODERN, FLEXIBLE, EVIDENCE-BASED METHOD OF ASSESSING NEW YORK'S JUDICIAL NEEDS

Throughout its history, New York State has struggled with an insufficient number of judicial seats necessitating stopgap measures that have resulted in a complicated, overworked, and confusing court system that fails to provide justice to all. The dire need for additional judges overall is a function of the chronic failure to provide adequate judicial resources to New York's Unified Court System. And while the reasons underlying such failure are manifold and multilayered, on a fundamental level, the lack of judicial resources stems largely from the constitutionally prescribed method by which the Legislature determines the number of justices that can be elected to the State Supreme Court. Since enacted in 1846, and as amended in 1961, Article 6 of the New York State Constitution has set the number of Supreme Court seats—which are elected positions—for geographically-defined areas known as judicial districts by using a solely population-based ratio—i.e., one justice per 50,000 people. The effect of such a formula is to cap the number of legislatively authorized Supreme Court seats within each judicial district, leaving the Legislature powerless to authorize additional seats to meet the growing and particular needs of the courts in such districts. The purely population-based "constitutional cap" has proven over-simplistic, outdated, and unworkable. It has created a ripple effect that has impacted the entire court system. Specifically, to address the lack of resources at the Supreme Court level, the Office of Court Administration (OCA) has long resorted to adopting makeshift measures that involve designating judges from other courts to sit on the Supreme Court on an "acting" basis. Not only has this "robbing Peter to pay Paul" approach depleted these other courts of judicial resources, but it has also created a de facto permanent and large class of "Acting Supreme Court Justices," sitting in a court other than the one to which they were either elected by the people or appointed by the relevant appointing authority.

To address this issue New York should adopt a constitutional amendment to repeal the cap on Supreme Court Justices (A.5366 AM Bores / S.5414 Sen. Hoylman-Sigal).[3] The need for this amendment has been endorsed by Governor Hochul[4] and Chief Judge Wilson.[5] This is a critical first step and the City Bar urges the Legislature to pass the amendment in the current legislative session so it can be put before voters in a timely manner.

In conjunction with repealing the cap on Supreme Court Justices, the City Bar recommends the following for the proper and adequate administration of justice in New York State's courts:[6] (1) language in the Constitution that requires the Legislature to consider whether to change the number of Supreme Court justices in any judicial district at least once every ten years; (2) enabling-legislation to codify a mandatory regular systematic assessment of the courts' specific needs; (3) annual reporting by OCA to analyze the

[3] *See* https://www.nycbar.org/reports/no-cap-act-supreme-court-justices/.

[4] *See* pg. 33, at https://www.governor.ny.gov/sites/default/files/2024-01/2024-SOTS-Book-Online.pdf.

[5] *See* pg. 4, at https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-01/chief-administrative-judge.pdf.

[6] *See* https://www.nycbar.org/reports/repeal-the-cap-and-do-the-math-why-we-need-a-modern-flexible-evidence-based-method-of-assessing-new-yorks-judicial-needs/?back=1.

number of judges in each court and request changes when appropriate; (4) establishing assessment methodology for assessing the judicial needs of all courts; (5) adopting transparency measures that ensure publication of the assessment's recommendations for the number of judges needed in each court and judicial district; and (6) consider less time-consuming statutory changes that are immediately available. For example, since the number of judges in courts other than the Supreme Court is not subject to a constitutional cap, the Legislature could immediately assess the judicial needs in those courts with support from appropriate professionals, and change the number accordingly. We would urge OCA to conduct a weighted caseload assessment in Family court immediately.

In this era of metrics, the people of New York State are entitled to a modern, flexible, evidence-based method of assessing the state's judicial needs, as is the case in many other states and the federal judiciary.

– New for 2024 –

SUPPORT ENHANCED 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.[7] Robust civil legal services funding remains critically important for rebuilding a post-pandemic New York. We support the civil legal services funding proposed by the Judiciary in its FY 2025 budget. Civil legal services funding remains critically important, if not lifesaving, for New Yorkers of low income who cannot afford counsel. It translates into an individual or family moving from a homeless shelter to their own home or avoiding eviction or foreclosure to stay in their home; accessing public benefits, medical care, or other vital life essentials; or, in the case of the burgeoning community of asylum-seekers arriving in New York, starting a new life away from the threat of persecution. Each victory in matters like these can and should make us proud. At the same time, civil legal services funding brings great value to New York's economy. By now, the civil legal services and nonprofit community is familiar with the 2019 report of the Permanent Commission on Access to Justice which presented a detailed analysis finding that Judiciary Civil Legal Services funding resulted in a return of $10 to our state's economy for every $1 of funding. Given this context, and the goal of extending and deepening New York's post-pandemic recovery, maintaining if not further increasing each dollar of that funding remains imperative. That is especially true as the safety net effects of pandemic assistance funding and the eviction and foreclosure moratoriums fade, and providers like the City Bar Justice Center see a rise in appeals for pro bono assistance. We urge the Legislature and Governor to continue to support enhanced funding for civil legal services in the budget.

REFORM & 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 (S.7113 Sen. Hoylman-Sigal).[8] In 1975, New York enacted its current Article 9 for class actions, and 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

[7] *See* https://www.nycbar.org/reports/written-testimony-submitted-for-the-chief-judges-statewide-2023-civil-legal-services-hearing/?back=1.

[8] *See* https://www.nycbar.org/reports/report-in-support-of-legislation-to-reform-and-modernize-the-administration-of-class-actions-in-new-yorks-courts/?back=1.

entities; (3) adopt language stating that motions for class certification be made "at an early practicable time" rather than within 60-days of a responsive pleading; (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. ***City Bar Proposal***

PROVIDE INTERNET ACCESS TO INDIVIDUALS LIVING IN TEMPORARY HOUSING THROUGHOUT NEW YORK STATE TO ENSURE ADEQUATE ACCESS TO SERVICES

We support legislation that would provide internet access to individuals residing in temporary housing throughout New York State (A.5649-A AM Reyes / S.4561-A Sen. Gonzalez).[9] 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," the City Bar and the City Bar Justice Center have issued multiple reports and advocated for reliable internet access to be available to shelter residents as part of the #wifi4homeless campaign.[10] New York's shelters are overwhelmingly lacking internet access, an essential service which could reduce the length of residents' stays and facilitate their successful exit into permanent housing. Without reliable internet access, shelter residents cannot search and apply for permanent housing or jobs, participate in remote classrooms or complete assigned homework, apply for government benefits, stay connected to friends and family, access basic entertainment, or obtain necessary medical care. Many critical services have become reliant on internet-based platforms as we have moved to a hybrid world post-COVID. Everything from legal services and virtual court appearances to counseling and telehealth are now offered remotely and often preferred by service providers. Poor or no internet connectivity leaves many shelter residents unable to effectively participate in critical services needed for their well-being. This can lead to unnecessary interactions with the criminal justice and court systems, further straining overburdened systems. The legislation would cover State-funded temporary housing, including but not 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.

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 to permit attorneys to be licensed to practice in New York without maintaining New York residency or office space.[11] 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. This antiquated residency requirement does not reflect the current reality of hybrid work and the virtual practice of law. With the increasing reliance on electronic court appearances and the desire from both lawyers and their clients to be able to meet remotely, the concept of forcing attorneys – who are overwhelmingly small and solo practitioners – to maintain expensive office space is

[9] *See* https://www.nycbar.org/reports/support-for-legislation-providing-internet-access-to-individuals-living-in-temporary-housing-throughout-new-york-state/?back=1.

[10] *See* https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf.

[11] *See* https://www.nycbar.org/reports/support-for-repealing-judiciary-law-470-allowing-nonresident-attorneys-to-practice-in-new-york/?back=1.

unnecessary and does nothing to improve access to affordable legal services. The current law creates new motion practice gamesmanship, costing litigants needless legal expense, wasted time, and no tactical advantage. 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 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. 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, nor does it enhance attorney oversight or regulation. Removing the physical office requirement in New York will lower attorney costs, enhance access to justice, expand services offered and promote access to justice as a meaningful career choice.

GOOD GOVERNMENT

RAISE & RESET EXPECTATIONS ABOUT STATE ETHICS ENFORCEMENT IN NEW YORK

The creation of the Commission on Ethics and Lobbying in Government (COELIG) as a replacement to the Joint Commission on Public Ethics (JCOPE) provides the opportunity to "reset" public and state officers' and employees' expectations about state ethics oversight.[12] We urge the Legislature to continue to look critically at ethics oversight in New York and consider additional reforms as needed to ensure COELIG is operating in a way that is effective, transparent and fulfills its mission. Additional reforms could include prohibiting *ex parte* communications between Commissioners and the elected officials (or their representatives) who appointed them; requiring additional reporting on the campaign activity of lobbyists; and releasing financial disclosure statements as open data.[13]

PROVIDE STUDENTS ESSENTIAL EDUCATION NEEDED TO BE CIVICALLY ENGAGED & PRODUCTIVE INDIVIDUALS IN A COMPLEX WORLD

The City Bar applauds the Blue Ribbon Commission on Graduation Measures, established by the Board of Regents, for recognizing the importance of adopting diploma credit requirements in the areas of "civic responsibility (ethics)" and financial literacy education.[14] We agree with the Blue Ribbon Commission in their assessment that these are "meaningful life-ready credential(s)" that provide critical tools to students in order for them to be full participants in our civic society. The Court of Appeals, New York's highest court, held in 2003 that the state constitution requires New York State to provide all of its students "a meaningful high school education," one that will prepare them to "function productively as civic

[12] *See* https://www.nycbar.org/reports/letter-to-celg-commissioners-about-resetting-expectations-about-state-ethics-enforcement-in-new-york/?back=1.

[13] *See* https://reinventalbany.org/wp-content/uploads/2022/03/Memo-to-Legislature-on-Ethics-Commission-Appointment-March-23-2022.pdf#page=5.

[14] *See* https://www.nysed.gov/sites/default/files/programs/grad-measures/nys-blue-ribbon-commission-graduation-measures-report.pdf. The Blue Ribbon Commission report has many laudable ideas; our Agenda focuses on those areas of the Report where the City Bar has existing positions. Our members have focused on civic education and financial literacy because, as lawyers, they have seen in their practices the particular impacts when individuals have not had the benefit of this type of education.

participants capable of voting [or] serving on a jury," and "to obtain 'competitive employment.'"[15] Yet many New York students are not receiving adequate instruction on civics and financial literacy. The lone civic education requirement in the State is a one semester Participation in Government high school course. New York does not require any separate personal financial literacy course for high school students, but merely suggests possible topics to be integrated as part of a one-half credit requirement (one credit in New York City) that students complete in economics.

Civic education cannot be squeezed into a social studies course only when teachers are able to find extra time (something we all know is in short supply). Nor should it be reduced to classes on ethics, civility, and respectful dialogue. While those are important skills, knowledge of how our government works is a distinct subject area that is more critical than ever in a time when false news is rampant and there are ongoing attacks on the rule of law and our institutions.[16] Likewise, without a required, separate course in personal financial literacy, virtually no high school graduates in New York will know, for example, that a standard auto policy will not cover them if they have an accident while driving for Uber, or how to improve their credit score, or how to prudently borrow for college, or how to economically purchase or lease a car, or how to profitably save for retirement.[17]

We believe that as lawyers we have a responsibility to help promote greater understanding in the younger generation of the panoply of federal and state laws that regulate our democracy and economy. Without that understanding, they cannot be expected to become fully successful participants in these critical systems of our society. We urge the Governor and Legislature to support the recommendations of the Blue Ribbon Commission and help ensure that civic education and financial literacy become required courses for high school graduation.

– New for 2024 –

CRIMINAL JUSTICE REFORM IN NEW YORK

ENACT THE COMMUNITIES NOT CAGES BILL PACKAGE

The City Bar supports enactment of the Communities Not Cages suite of bills.[18] These three sentencing reform bills are a long overdue overhaul of the most pernicious aspects of New York's sentencing laws. The *Eliminate Mandatory Minimums Act* (A.2036-A AM Meeks / S.6471 Sen. Myrie) allows judges to consider the individual before them in sentencing rather than requiring them to sentence people to predetermined sentences and reduces the potential for coercive pleas. Importantly, the bill establishes rehabilitation and successful reentry into the community as the purpose of sentencing, and it directs judges to impose the "minimum sentence necessary" to achieve those goals. Judges would be able to consider sentences that would be most effective in addressing the individual's behavior and the unique circumstances of the offense and enable more people to remain with their families and communities.

[15] Campaign for Fiscal Equity, Inc. v. State of N.Y., 100 N.Y.2d 893 (2003).

[16] *See* https://www.nycbar.org/reports/letter-to-nysed-regarding-nyseds-blue-ribbon-commission-on-graduation-measures/.

[17] *See* https://www.nycbar.org/reports/report-in-support-of-requiring-a-personal-financial-literacy-course-in-nys-high-schools/?back=1.

[18] *See* https://www.nycbar.org/reports/communities-not-cages-act/?back=1.

Notably, the bill does not change New York's maximum allowable sentences, and judges could continue to impose long sentences in instances where they deem them appropriate. The *Second Look Act* (A.531 AM Walker / S.321 Sen. Salazar) would enable those currently incarcerated with long sentences to petition judges for reduced sentences. Under present New York law, there is almost no process for judges to reduce an incarcerated individual's sentence—no matter how much evidence there is that serving the remainder of that sentence would be fruitless for both the individual and the state. By providing an outlet by which indicators of rehabilitation could justify release, the Act would incentivize good behavior and participation in rehabilitative programming while ensuring that individuals do not languish in prisons for long sentences that do not benefit community safety. The *Earned Time Act* (A.1128 AM Kelles / S.774 Sen. Cooney) would enable those serving long sentences to earn credit to reduce their sentences by complying with prison rules and by participating in treatment, education, vocational training, and work programs. Incentivizing individuals to use in-prison programs that focus on self-improvement encourages rehabilitation. It will also help reduce recidivism rates and reduce New York's correctional costs.

As New York was the first state to enact harsh mandatory sentencing laws and provided other states a blueprint to do so, it is fitting for the state to lead the country in comprehensive sentencing reform that reduces mass incarceration.

– New for 2024 –

ENACT THE TREATMENT NOT JAIL ACT

Despite the fact that large numbers of people with mental health disorders are funneled into and through the criminal justice system, the criminal legal system is not structured to assist people with significant mental health problems and address their needs. A recent study found that half of all people incarcerated in New York City jails had a mental illness; the State prison system is similar, with more than 14,000 incarcerated in State prisons who suffer from mental illnesses. The *Treatment Not Jail Act* (A.1263-B AM Forrest / S.1976-B Sen. Ramos) would help ensure that people who come into contact with the criminal justice system receive appropriate therapeutic treatments for various functional impairments, including mental health disorders and substance use disorder by expanding diversion courts in several ways.[19] The Treatment Not Jail Act would create a new norm to address mental health disorders in a manner that is humane, just, and will also increase public safety by addressing some of the pressures that cause people to commit crimes.

– New for 2024 –

SUPPORT FOR THE NEW YORK ELDER PAROLE BILL

Nearly 1 in 5 incarcerated people under the Department of Corrections and Community Supervision's (DOCCS) custody is serving a life or virtual life sentence (with a maximum sentence of 50 years or more) – a total of over 9,000 people. Of this group, over 1,200 are serving a sentence of life without parole or a virtual life without parole sentence (a minimum term of 50 years or more) and are effectively sentenced to die in prison without any individualized review or public safety assessment. Even as the total DOCCS' population has fallen by more than 30 percent since 2000, the number of older people in prison has more than doubled during the same time period as a result of these long sentences. There are now over 10,000 people aged 50 and older and over 5,700 people age 55 and older in DOCCS' custody. They represent

[19] *See* https://www.nycbar.org/reports/support-for-the-treatment-not-jail-act/?back=1.

more than 20 percent of all people in New York's prisons. Older incarcerated people often have serious health problems and the cost of incarcerating them is conservatively estimated to be $1 billion per year.

Years of evidence, including decades of DOCCS' own data, shows that people age out of crime, and that older people pose the lowest risk of recidivism when released. The *Elder Parole bill* (A.2035 AM Davila) / S.2423 Sen. Hoylman-Sigal) would permit the Board of Parole to evaluate all incarcerated people over the age of 55 who have served at least 15 years in prison for possible parole release. It does not mandate release, but allows the Board to make an individualized public safety assessment to determine whether an individual is safe to be released to parole supervision even if he or she has not completed the court-imposed minimum term. We urge the Legislature to pass this sensible reform that allows the parole board to consider release for this population, which would permit consideration of an individual's own rehabilitative process, changing norms around sentencing, and an acknowledgement of the unnecessary harshness of imprisoning people well past the age where they are likely to commit further crimes.[20]

– New for 2024 –

NO FURTHER ROLLBACKS TO CRITICAL CRIMINAL JUSTICE REFORMS IN NEW YORK

The City Bar urges Governor Hochul and members of the Legislature to refrain from further rollbacks to critical criminal justice reforms enacted in recent years. These reforms – and bail reform in particular – have been falsely vilified in recent years as the source of increases in crime nationwide that began during the COVID-19 pandemic. Our elected leaders should take seriously the public's concerns about crime and safety. However, blaming the wrong cause means we ignore the right solutions. Rolling back meaningful criminal justice reforms is not the right solution.

We are living through a period of heated public discourse about the impact of criminal justice reform on community safety and stability. As lawyers committed to making our criminal legal system more just for all New Yorkers, we are disturbed by a lawlessness narrative that erroneously blames reforms for increases in crime rates that are being seen across the country in jurisdictions without similar laws. This narrative presents a false choice between community safety and criminal justice reform. We call on our elected officials to oppose rushed and ineffective rollbacks to criminal justice reform, and instead to use data, facts and transparency to rebut misinformation suggesting that such reforms have led to the release of dangerous people into the community and increased crime.

To reach their full potential, existing criminal justice reforms must be fully funded and supported by the State. Instead of returning to an era of massive over-incarceration of people at Rikers Island for minor offenses, the Legislature should focus on funding desperately needed investments in our communities, such as mental health treatment, job training, violence intervention programs, and pretrial services. Such programs have proven far more effective at preventing crime than incarceration. We urge evidence-based investment in preventive support, pretrial programming and research to ensure that these statutes' positive impacts can be maximized and assessed, and data disseminated transparently to all New Yorkers. The pandemic only heightened the need for this investment, and we support efforts to increase those

[20] *See* at "Age 55 bill," https://www.nycbar.org/reports/a-pathway-out-of-mass-incarceration-and-towards-a-new-criminal-justice-system-recommendations-for-the-new-york-state-legislature/?back=1.

investments in the budget. Indeed, adequate investments in services are a necessary precondition for a number of the reforms contemplated.

CHILDREN & FAMILIES

PROTECT CHILDREN DURING CUSTODIAL POLICE INTERROGATION

The City Bar supports legislation to protect children during custodial police interrogation (S.1099 Sen. Bailey). Youth are uniquely vulnerable to making an unknowing, unintelligent, or involuntary waiver of their Miranda rights and of providing unreliable or false confessions.[21] The proposed legislative amendment defines key terms in the current law and provides additional safeguards to protect the Constitutional rights of children. The amendment defines when the police must contact the youth's parent or guardian and requires that a youth subjected to custodial interrogation first consult an attorney. New York's current interrogation law fails to protect children, despite their well-known vulnerabilities, as recognized by passage of recent legislative reforms, such as Raise the Age, that center on where a young person is in their development in approaches to public safety. The effect of New York's current approach is disproportionately visited upon Black and Latinx youth subject to custodial interrogations. New York's youth justice system continues to be marked by deep racial and ethnic disparities from arrest to case resolution. An attorney can assist youth in understanding their legal rights and the potential consequences of waiving those rights.

ENACT THE ANTI-HARASSMENT IN REPORTING BILL

Under current state law, anyone may call the child maltreatment hotline, for any reason, and anonymously lodge a report of abuse or neglect. Because members of the public are not required to provide any identifying information, this results in many false and malicious reports of child maltreatment. The *Anti-Harassment in Reporting Bill* (also known as the *Confidential Reporting Bill*) (A.2479 AM Hevesi / S.902 Sen. Brisport) would benefit children and families by ending the anonymous reporting of alleged child maltreatment and requiring all reporters to identify themselves, thereby deterring false and malicious reporting. The bill provides that reports will continue to remain confidential, except for the investigating child protective specialists. Reports of child abuse and neglect, and the resulting investigations, cause varied and long-lasting harms to children and their families. Reports show that the majority of calls to child abuse hotlines result in no findings of child maltreatment, and many are made for the purpose of harassment. False allegations of child abuse or neglect have a particularly detrimental impact on families of color, who have a history of overrepresentation and disparate treatment within family court and child protective service systems. Families of color are more likely to be reported to and investigated by child protective services, and have higher rates of family separation and foster care placement once involved with the child protective system. The City Bar argues this bill would improve our system for reporting and investigating child maltreatment, and would represent an important step toward reducing the disparate impact of the child welfare system on Black, brown and Indigenous families.[22]

[21] *See* https://www.nycbar.org/reports/legislation-to-protect-children-during-custodial-police-interrogation/?back=1.

[22] *See* https://www.nycbar.org/reports/bill-to-reduce-false-child-maltreatment-reports/?back=1.

ADOPT A PARENTAL BILL OF RIGHTS IN CHILD PROTECTIVE SERVICES INVESTIGATIONS

The City Bar supports amending the Social Services Law to require child protective services to orally disclose certain information to parents and caretakers who are the subject of a child protective services investigation (A.1980 AM Walker / S.901 Sen. Brisport).[23] The bill ensures that investigators retain all existing legal authority to protect children and acknowledges the possibility that emergency circumstances may exist, while also providing parents the information they need to protect their families from unwarranted intrusion. Specifically, the bill requires child protective investigators to inform parents and caretakers of certain rights and information at the beginning of a child protective investigation, including that unless court-ordered, the parent is not required to permit the child protective investigator to enter their residence; that the parent is entitled to be informed of the allegations against them; that the parent is not required to speak to the child protective investigator, and any statements made to the investigator may be used against the parent in an administrative or court proceeding, and that the parent is not required to permit the investigator to interview the child or children. The bill also requires a child protective investigator to inform the parent of their right to seek the advice of an attorney and have that attorney present when the parent is interviewed by the child protective investigator. This plain language "Parental Bill of Rights" bill does not create any new rights, but ensures that parents under government investigation know their rights before giving authorities access to their children, homes and medical information.

– New for 2024 –

PRESERVE FAMILY BONDS AFTER TERMINATION OF PARENTAL RIGHTS

The City Bar supports efforts to give Family Court judges the discretion to order continued contact between children and their families of origin after a parent's rights are terminated.[24] This concept is grounded in research and the growing understanding that openness in adoption plays an important role in the well-being of many adopted children and their families. For instance, biological parents can reinforce that the termination was not the fault of the child and that the parent still loves and cares for the child, even if they are unable to parent him or her. Post-termination contact also allows children access to their racial, ethnic, religious and cultural histories, which can be critical in developing a sense of self. Further, this policy is consistent with the federal government's latest guidance regarding state efforts to obtain permanency for children in foster care, issued in January 2021, which placed significant emphasis on the importance of maintaining children's ties to their families and communities of origin.

REFORM & IMPROVE NEW YORK FAMILY COURT FOR ALL LITIGANTS

Long-standing, deep inequities in New York's historically under-resourced Family Court has left that court ill-equipped to respond quickly, consistently, fairly and comprehensively to the needs of all litigants, particularly since the outbreak of the COVID-19 pandemic.[25] Family Court primarily serves unrepresented litigants, lower-income families and communities of color. As found by Secretary Jeh Johnson in his 2020

[23] *See* https://www.nycbar.org/reports/report-in-support-of-a-parental-bill-of-rights-in-child-protective-services-investigations/?back=1.

[24] *See* https://www.nycbar.org/reports/support-for-the-preserving-family-bonds-act-2/?back=1.

[25] *See* https://www.nycbar.org/reports/the-impact-of-covid-19-on-the-new-york-city-family-court-recommendations-on-improving-access-to-justice-for-all-litigants/?back=1.

Equal Justice report and our members who work in and study the Family Court,[26] Family Court operates as a second-class system of justice.

The City Bar has made recommendations to improve the conditions in Family Court that are achievable and necessary and already subject to broad consensus among Family Court stakeholders. Recommendations include calls for Family Court to adopt NYSCEF e-filing; provide regular statistical reporting; enact uniform rules; expand technological capabilities for remote proceedings and for communications with stakeholders; act expediently to provide all lawyers who work in the Family Court with UCMS access; move judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays; and expand judicial resources and management training for jurists. We also encourage the court system to provide clear, public-facing information regarding implementation efforts, monitoring, and how stakeholders can regularly provide input as part of the process.[27]

Additional Family Court judges and personnel will help ameliorate some of the backlog; however, in order to comprehensively and effectively tackle the inequities in Family Court, all three branches of government will need to be committed to that goal and will need to work collaboratively with all stakeholders to get there.

– New for 2024 –

BUSINESS & CONSUMER AFFAIRS

PRESERVE NEW YORK'S PREEMINENCE AS A LEADING COMMERCIAL JURISDICTION BY ENACTING THE NEW YORK EMERGING TECHNOLOGIES AMENDMENTS TO THE UNIFORM COMMERCIAL CODE

New York commercial and financial law has unique respect for freedom of contract and strong protections for the negotiability of commercial instruments. This has long made New York the preferred U.S. jurisdiction for paper-based commercial and financial transactions; however, this is not the case for transactions involving digital assets. Enacting the *New York Emerging Technologies Amendments*[28] is necessary to preserve New York's preeminence as a leading commercial jurisdiction by adapting New York's Uniform Commercial Code (UCC) to recent and potential future developments in technology and related new methods of doing business.[29] The amendments will promote and encourage technological and commercial advances that decrease transactional costs and enhance the efficiency, certainty and security of commercial and financial transactions governed by the New York UCC. The importance of these improvements to the New York UCC cannot be overstated. Technological and commercial advances that decrease transactional costs and enhance the efficiency, certainty and security of commercial and

[26] *See* https://www.nycbar.org/reports/testimony-on-new-york-state-family-court/?back=1.

[27] *See* https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf.

[28] A partial version of the amendments has been introduced as S.7244 by Senator Hoylman-Sigal; *see* https://www.nycbar.org/reports/new-york-should-update-its-uniform-commercial-code-to-address-emerging-technologies-including-digital-assets/?back=1.

[29] *See* https://www.nycbar.org/reports/emerging-technology-amends-ucc-ny/.

financial transactions are major factors that are considered when market participants are deciding whether to choose New York as the governing law and the jurisdiction to resolve disputes and whether businesses will decide to locate their businesses in New York.

The amendments will also help ensure New York's leadership in commercial and financial progress and growth and will disincentivize migration of digital commerce to other jurisdictions which more clearly promote and encourage technological and commercial advances. The New York UCC has not been updated since 2014 and there have been many important advancements in technology since that time. New York is now in a position where it must act expeditiously to enact the New York Emerging Technologies Amendments. Eleven states have already enacted the Model UCC Amendments proposed by the Uniform Law Commission (ULC), and another 15 states and the District of Columbia have introduced bills covering the Model UCC Amendments. More states are expected to follow suit, and every time another state adopts the Model UCC Amendments, the more likely New York risks that market participants will prefer one of those states for transactions involving digital assets or even the law of other countries, such as England, which are rapidly reforming their commercial laws to accommodate emerging technologies and electronic transactions. It is therefore essential that New York adopt the New York Emerging Technologies Amendments this session. ***City Bar Proposal***

– New for 2024 –

ENACT THE CONSUMER & SMALL BUSINESS PROTECTION ACT

The City Bar supports the *Consumer and Small Business Protection Act* (CSPA) (A.7138 AM Weinstein / S.795 Sen. Comrie).[30] 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 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.

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

[30] *See* https://www.nycbar.org/reports/support-of-consumer-and-small-business-protection-act/?back=1.

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 (as opposed to a complete ban on noncompetes) in order to ensure equity and fairness in employment markets while preserving New York's traditional role as the nation's commercial leader.[31] 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. ***City Bar Proposal***

[31] *See* https://www.nycbar.org/reports/legislating-fairness-regulating-the-use-of-noncompete-agreements-for-lower-salary-employees/?back=1. *See also* https://www.nycbar.org/reports/letter-to-governor-hochul-in-opposition-to-ban-on-non-competition-agreements/?back=1.