

January 3, 2022

Hon. Kathy Hochul
Governor of New York State NYS
State Capitol Building
Albany, NY 12224

Hon. Andrea Stewart-Cousins
Majority Leader, New York State Senate
188 State Street LOB - Room 907
Albany, NY 12247

Hon. Carl Heastie Speaker, New York State Assembly
New York State Capitol - Room 349
Albany, NY 12247

John K. Carroll
President

Zachary W. Carter
Chairperson of the Board

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

Re: Legal Aid Society Civil Legal Services 2022 Statewide Legislative Priorities

Dear Governor Hochul, Majority Leader Stewart-Cousins and Speaker Heastie:

As one of the primary organizations in New York City providing a myriad of critical legal services to New Yorkers, we write today concerning our 2022 statewide legislative priorities. Building on the successes recently enacted by Albany to address income inequality, poverty, homelessness, and tenant, immigrant and consumers issues, we urge you to swiftly advance the following pieces of legislation.

If you have any questions, please do not hesitate to contact me. We look forward to working with you all in 2022 to make New York a more fair and just city for our clients and the communities we serve.

Sincerely,



Adriene Holder
Attorney-In-Charge
Civil Practice
The Legal Aid Society

HOUSING

Pass new “good cause” eviction legislation to bring renters’ rights to tenants in smaller buildings (Salazar S.3082/Hunter A.5573):

Rent stabilization only applies to buildings with six or more units. But more and more, large corporate landlords are buying up smaller buildings, and tenants who live in them face escalating rents and displacement. As the housing affordability crisis seeps out of New York City and into the suburbs, it is imperative that we bring rent relief to smaller buildings as these residents increasingly come under threat of displacement. This bill would require landlords to offer renewal leases unless they had good cause for denying the renewal. It would also limit rent increases by providing for a measure connected to inflation and providing a rebuttable presumption that increase over that percentage are unreasonable.

Public Housing Preservation Trust Legislation:

The Public Housing Preservation Trust would propose transferring 110,000 apartments to a newly created public entity that would expedite repairs and improvements and allow the properties to receive more funding through switching from a Section 9 subsidy to Tenant Protection Vouchers or Section 8. NYCHA would remain a permanent owner of the properties, and a long-term ground lease with the Trust would allow NYCHA to raise money for major rehabilitations, a function many government agencies, including the MTA, already enjoy.

Regina Metro fix (Kavanagh S.7193):

As part of the Housing Stability Tenant Protection Act, the legislature significantly reformed the overcharge law, increasing from 4 to 6 years the time to challenge a rent overcharge and providing a new standard which would allow tenants to challenge older rent overcharges where the rent increases were unreliable. In Regina Metro v. HCR, the Court of Appeals limited the amended law on overcharges to prospective overcharges. However, the issue of rent setting was not at issue before the court. This legislation amends the rent overcharge law to make clear that changes to the law can be used for setting rents.

HSTPA fixes (Kavanagh S.7213):

This is a multi-issue bill which includes changes to the ETPA and the RPAPL to address concerns about loopholes that were left in the law after HSTPA was passed. The law addresses the issue of first rents for apartments that are combined, avoiding the IAI change in HSTPA, it amends the law to address succession rights as interpreted by Third Lenox, addresses substantial rehabilitation claimed decades after the work is done, it amends the rent impairing violation law to so make it useable by tenants, it amends the RPAPL to ensure that occupants cannot be locked out without legal process, it requires an inquest hearing in NYC nonpayment cases where the tenant has defaulted, and it includes the language from S.7193.

Foreclosure Statute of Limitations Legislation (Thomas S.7293/Weinstein A.7737):

This legislation would correct recent appellate decisions which jettisoned well-established precedents that required lenders to unequivocally revoke the acceleration of mortgage loans before commencing a new foreclosure action within the six-year statute of limitation. If enacted, the bill would prevent mortgage lenders from burdening homeowners with repeated foreclosure actions and clogging the courts with stale claims.

Making DFS Mortgage Servicing Regulations Enforceable (A.2428/S.2143):

This legislation would amend Banking Law 12-D and establish a private right of action for violations of the NYS Department of Financial Services (DFS) strong mortgage servicing regulations (Part 419). Unlike their federal parallels, borrowers have no mechanism to enforce these state regulations, allowing mortgage servicers to violate DFS regulations with impunity. This legislation would provide mortgage servicers with a strong incentive to comply with the regulations by permitting homeowners injured by their violations to bring affirmative claims, or asserting violations as a defense to foreclosure actions.

PUBLIC BENEFITS

Raise the Cash Assistance Welfare Grant for New Yorkers (legislation not yet introduced):

The COVID-19 crisis taught us the obvious, that when you give low-income people assistance in the form of cash, poverty is reduced. On average New York State Cash Assistance levels, an aggregate of the "Food and Other" grant (available for non-shelter needs) and the shelter allowance (for rent only) are worth no more than 40 percent of the Federal Poverty Level, meaning that the State is choosing to relegate New Yorkers to the deepest form of poverty. The basic needs part of the grant was last updated a decade ago, and the shelter allowance almost two decades ago. Updating the whole grant will help New Yorkers hardest hit by the pandemic get back on their feet and is a matter of racial and economic justice. As a related matter, we support A. 8061 (Rosenthal), which would raise the basic needs allowance for homeless New Yorkers who receive assistance according to a lower schedule of grants, one that has not been updated in decades.

Implement a Set of Rules that Increase Equity Among Low-Income New Yorkers Seeking to Get Through the Pandemic:

Since the summer of 2020, Legal Aid has been calling upon the State to adopt targeted measures that will enable low-income New Yorkers who need assistance with housing and utilities to get through the pandemic on the same terms as their neighbors who may have received Federal ERAP money for this purpose by (a) implementing the following time limited changes (until the public health emergency is officially over): (1) issue rent arrears grants (known as "one-shot deals") without requiring repayment; (2) issue utility arrears grants without requiring repayment; (3) suspend repayments of all overpayments; and (b) permanently eliminating the "lawsuit requirement" for all rent assistance grants.

Adopt other legislative fixes that will help reduce poverty in New York State (various):

We also want to see the implementation of other ways of ensuring that our clients have more money to weather emergencies like loss of a job, housing instability, and health crises and can still afford to meet their basic needs, including eliminating the 185 percent of the "Standard of Need" rule; reforming resource rules (A.2214 Niou/S.742 Biaggi); and reforming earned income rules.

HOMELESS RIGHTS

Housing Access Voucher Program (Kavanagh S.2804A/Cymbrowitz A.3701A):

The Housing Access Voucher Program (HAVP) would create a state-wide Section 8 program. The bill would prioritize vouchers for homeless New Yorkers to provide a path to permanent housing while also providing vouchers to low-income tenants who are unstably housed.

The Housing Our Neighbors with Dignity Act (Gianaris S.5257/Reyes A.6593):

The Housing Our Neighbors with Dignity Act (HONDA) would allow the state to convert unused hotels and commercial office space into permanent, affordable housing for low-income families and people experiencing homelessness.

Ensure Access to Wireless Internet for Shelter Residents (Biaggi S.9030A/Hevesi A.11108):

This legislation would amend the Social Services Law to provide for internet access to all temporary housing facilities. The bill would require local social service districts to provide internet access to all temporary housing facilities in their districts, which would then be 10% reimbursed by the state. The bill would include but not be limited to covering internet access at family shelters, single adult shelters, DV shelters, runaway/homeless youth shelters and safe houses for refugees.

HEALTH

Reform Public Assistance and Medicaid Overpayment Recovery Processes (Gottfried A.5613/Rivera S.4540):

This legislation improves the deeply flawed overpayment process for Public Assistance and Medicaid benefits in several ways. It limits the recovery to the amount up to the value of the property which caused the overpayment, or the cost of the assistance or care received, whichever is lower. It prohibits lawsuits to recover overpayments from recipients under the age of 21 and in circumstances in which an overpayment did not result through any fault of the recipient but from agency or contractor error. It contains protections against recovery of benefits related to the COVID-19 public health emergency. It creates a defined waiver for recipients for whom an overpayment judgment would create undue economic or other hardship. For recipients who currently are subject to overpayment settlement agreements, it creates debt forgiveness and relief in light of the COVID-19 public health emergency. It defines requirements to bring a lawsuit to recover an overpayment, reduces the statute of limitations, and reduces the interest rate to the one-year United States treasury bill rate.

Medicaid Recertification Simplification (Gottfried A.155/Rivera S.4965):

This legislation allows for automatic enrollment and recertification simplification for certain Medicaid eligible recipients, including those who receive home care services and receive a fixed income from Social Security. This bill was vetoed by the Governor in 2019 based on a concern that it violates federal law. However, federal law encourages this facilitation of enrollment and recertification.

End the Senior and Disabled Penalty in Medicaid:

New York State must act to eliminate a blatant inequity that makes it more difficult for seniors and people with disabilities to qualify for Medicaid. While New York has traditionally been a leader in Medicaid coverage, with broader eligibility standards even before the passage of the Affordable Care Act, New York has failed to address the inequity in Medicaid eligibility for seniors and people with disabilities, who remain subject to welfare eligibility rules frozen in time since the 1960s. These rules create a “Medicaid cliff” when an enrollee turns 65 or obtains Medicare based on Social Security Disability, where the Medicaid income limit drops from 138% to only 84% of the federal poverty level (from \$1,482 monthly to \$884 for a single individual), and individuals are suddenly subject to an asset test. Eliminating the inequity in eligibility due to age and disability status is crucial to reducing health disparities that have made COVID-19 disproportionately lethal for communities of color, who are more likely to be harmed by these rules.

The Legal Aid Society calls on New York to 1) raise the Medicaid income limit for the population known as the “non-MAGI” to the same income limit that applies to all other New Yorkers; 2) eliminate the asset limit that only applies to the non-MAGI; and 3) increase the income limits for the Medicare Savings Program.

Expand Essential Plan Coverage to Immigrants With COVID-19 (Rivera S.2549/GottfriedA.1585):

This bill would provide temporary Essential Plan coverage to income-eligible New Yorkers who tested positive for COVID-19 and are otherwise ineligible for coverage based on their immigration status.

End Discrimination in New Medicaid Home Care Eligibility Requirements (Gottfried A.4309/Rivera S.3055):

A new requirement limits eligibility for home care services to those who need assistance with more than two Activities of Daily Living (ADLs). There is an exception for those with Alzheimer’s and dementia which allows for home care if they need help with more than one ADL, but the exception doesn’t apply to other cognitive disabilities. This legislation adds other cognitive disabilities including traumatic brain injury, developmental disability, cognitive impairment, and blindness to the exemption.

Correct Medicaid Look-back requirements (Gottfried A.833A/Rivera S.2542):

The new look-back requirement enacted in the 2020-2021 State budget (though yet to be implemented) would count any assets transferred during the last 30 months as available resources to an individual

applying for home care. The look-back requirement as written would compromise access to home care for many applicants. This legislation would make several changes, including exempting certain asset transfers, including those used for the benefit of the home care applicant. It would also allow attestation about transfers for those with an immediate need for home care and would correct a provision that would essentially make it impossible for anyone's home care services to begin after the look-back.

EMPLOYMENT

Fair Play in Employment Act (pending):

The Legal Aid Society is part of the NY Do It Right Employment Classification Test (NY DIRECT) Coalition, which includes various unions, worker centers and legal advocates. The Coalition supports the Fair Play in Employment Act (bill number pending), which would reclassify more workers as employees rather than independent contractors, allowing them to receive benefits and protections. Most workers in our economy are and should be treated as "employees" entitled to the protection of core labor standards, but employers often abuse the independent contractor label to evade responsibility for their workforce.

The current tests for determining worker status under New York law are easily manipulable by employers and inconsistently applied by courts and other decision-makers. The resulting rampant misclassification hurts New Yorkers in nearly every industry, from bike messengers and for-hire drivers to app-based workers, tutors, nail workers and night club workers. This long-standing problem has only been exacerbated by the growth of app-based businesses that call their workers contractors. When employees are misclassified as independent contractors, they are robbed of basic labor standards, including wage and hour protections, health and safety standards, workers compensation, and unemployment insurance.

This legislation would implement the "ABC" test, which is a clear and objective test for determining workers' employment status. New York must join the 26 state that already use "ABC" tests in unemployment insurance law, providing greater certainty for both workers and employers in those states.

End Forced Labor in Correctional Facilities (Myrie S.308/Epstein A.3142):

This legislation would amend the New York State Constitution to prohibit prison slavery by allowing people incarcerated in a New York State prison the right to refuse to work while incarcerated. The amendment process requires the passage of this bill in two consecutive legislative sessions, as well as a referendum.

The Prison Minimum Wage Act (Myrie S.287/Perry A.1643):

This legislation would extend New York's minimum wage laws to incarcerated workers, setting a \$3.00 per hour minimum wage for inmates.

IMMIGRATION

The Dignity Not Detention Act (Reyes A.7099A/Salazar S.7373):

The Dignity Not Detention Act would prohibit local governments from entering into, renewing or continuing immigration detention contracts, taking New York State out of the immigrant detention business and putting an end to the inhumane and unnecessary incarceration of immigrants in New York jails. The Act aims to stop localities in New York from profiting from the incarceration of immigrants in city or county jails, and as a result, to decrease ICE family separation in New York State and shrink ICE's detention footprint nationwide.

The NY For All Act (Reyes A.02328/Salazar S.03076):

The NY For All Act would bring New York in line with other U.S. states and cities by limiting the use of state and local resources for immigration enforcement purposes by prohibiting state and local law enforcement, among other government entities, from questioning individuals regarding their citizenship or immigration status. The Act would ensure that state and local governments are not entangled in the business of immigration enforcement while recognizing the invaluable contributions of Immigrant New Yorkers to our communities, economy and culture.

FAMILY

Child Custody Forensic Reports (Weinstein A.8110/Biaggi S.753):

Provides for uniform access to court ordered forensic mental health evaluation reports and underlying data by litigants, their counsels, and the counsel for the attorney for the child in child custody and visitation cases. Creates a uniform procedure for forensic evaluation reports, which takes the due process rights of litigants into account, and calls for some additional protections, including timely appointment of attorneys for the child and mandatory training and certification of forensic evaluators to further improve custody and visitation matters in family court.

Child Custody Forensic Reports and Training (Dinowitz A.2375B/Hoylman S.6385):

Regulates court ordered forensic evaluations involving child custody and visitation and establishes training programs for such forensic evaluators.

Amending SSL 459-a:

SSL 459-a defines a domestic violence survivor. It was most recently cited in the governor's budget, section PP and is now referenced in DRL 236B. The problem is that when we amended the FCA article 8 (OP law) to include financial crimes, we did not add these crimes to the definition of DV in the SSL. This adds these crimes in, including "identity theft, grand larceny, coercion" at SSL § 459-a(1) in the definition of "victim of domestic violence."

CONSUMER

Consumer and Small Business Protection Act (CSPA) (Niou A.2495A/Comrie S.6414):

The bill did would include unfair and abusive acts under GBL 349's list of prohibited acts. It eliminates the requirement that the prohibited activity be consumer oriented or have an impact on the public at large. Statutory damages increase from \$50 to \$1,000, and punitive damages would be permitted. Attorney fees would be required for the prevailing plaintiff, rather than being discretionary. Also, the bill allows third party standing for some organizations to represent members of the public.

Imposes a 16 Percent Interest Rate Cap on Auto Loans (Zebrowski A.819/ Sanders S.3237):

About a quarter of all auto loans are now subprime loans, made available to customers who do not qualify for prime loans because of their credit history. Currently, car dealers in New York state are permitted to use retail installment contracts that have an exception from the state's civil usury cap of 16% and are making high-cost car loans to low- and moderate-income customers at rates of up to 24.99%. At rates that high, consumers can end up paying more in interest than the cost of the car. We have seen increasing numbers of clients who enter unaffordable auto loans at 22-23 percent interest and are unable to break out of these installment agreements.

TAX

Provide for a simplified procedure for determining economic hardship in order to protect the rights of tax debtors facing a driver's license suspension:

The New York Legislature amended Tax Law Section 171-v on April 1, 2019 to include new grounds upon which a taxpayer may challenge the proposed suspension of her license. A taxpayer can now challenge on the basis that she receives public assistance or supplemental security income, or that "suspension of the taxpayer's license will cause the taxpayer undue economic hardship." The amendments do not contain any father definitions of "undue economic hardship."

Tax Law Section 171-v should be amended to clearly define economic hardship in order to protect the rights of taxpayers who would be harmed by a suspension of their driver's licenses. In addition, N.Y. Tax Law § 171 can be amended to provide that taxpayers can demonstrate "undue economic hardship" simply by making a brief sworn statement, or that the Department of Taxation and Finance's regulations defining "undue economic hardship" must be answerable by the taxpayer in a brief sworn statement; or the statute could be amended to define "undue economic hardship" could more simply. This would reduce the requirements for taxpayers seeking an Offer in Compromise *and* for taxpayers seeking an exemption from their license suspension. Section 171 already authorizes the commissioner of the Department to "promulgate regulations defining what constitutes undue economic hardship."

Finally, the Department could amend and shorten requirements for demonstrating undue economic hardship as described in 20 N.Y.C.R.R. § 5005.1(b)(3)(i); this would be a regulatory change that would pertain to demonstrating undue hardship both in OICs and license suspension challenges.

CIVIL JUSTICE

Eliminate the Notarization Requirement:

A proposed Office of Court Administration program bill would amend CPLR 2106 to allow litigants in civil cases to swear to a statement under penalty of perjury without having to notarize the document. This bill should be expanded to remove the notarization requirement for statements made in both civil and criminal court cases, as well as statements made outside of the context of litigation. There is no evidence that notarization increases the truth of statements made and the requirements have only deepened the digital divide during the pandemic; remote notarization benefits only those who have reliable internet access, necessary technology such as printers and scanners, and a level of digital literacy, depriving low-income and senior litigants of the ability to make statements within the legal system. New York should join the more than 20 states in which, like the federal system, unsworn and unnotarized declarations are accepted as long as they include a statement that the document is true under the penalty of perjury. Eliminating this requirement will end unnecessary restrictions on access to the legal system for the most vulnerable New Yorkers and will bring New York in line with the federal law.