

New York State Bar Association

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Memorandum

To: NYSBA Executive Committee
From: Steering Committee on Legislative Priorities
Date: October 23, 2012
Re: Recommended State Legislative Priorities

Set forth below are the recommendations by the Steering Committee on Legislative Priorities (Committee) and discussion in relation to the selection of the Association's 2013 State Legislative Priorities:

I. 2012 Legislative Priorities recommended to be continued in 2013:

Integrity of New York's Justice System. An independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. As the State of New York faces the challenges and limitations presented by a down economy, the Governor and Legislature must ensure that adequate resources are provided so that the courts can meet their essential role.

Adequate funding for civil legal services provided by a dedicated revenue stream is necessary.

Further, in too many areas of the state, the current public defense system has not served the criminal justice system well. The right to the effective assistance of counsel is guaranteed by both the federal and state constitutions. Because of concerns that constitutional standards are not being met in all circumstances, the Office of Indigent Legal Services should be properly funded in order to carry out its mission.

Wrongful convictions cast serious doubt on a fundamental assumption of our criminal justice system—that the innocent are protected, the guilty are punished, and the public's trust and confidence in the criminal justice system is maintained. The Association has drafted a package of bills intended to address this topic, including a bill to amend the Criminal Procedure Law to require electronic recording of custodial interrogations.

Recording of custodial interrogations has been the subject of increased attention due to New York City Police Commissioner Kelly's September 19, 2012 announcement that the NYPD will begin recording all post-arrest interrogations in sex-crime and murder cases. The Committee concluded that while the Association should continue to work toward passage of the entire wrongful convictions legislation package, **the recording proposal should be highlighted** as it appears to be the most viable proposal.

Integrity of New York's Juvenile Justice System. The Committee recommends continuing to include legislation that would amend the Family Court Act to expand current law to provide for the audio and video recording of any interrogation of children.

Likewise, the Committee recommends continuing to include legislation to increase the age of criminal responsibility as a priority for 2013. New York is one of only two states in which children who are age 16 and over cannot be prosecuted as juvenile delinquents and, consequently, must be prosecuted as adults in the criminal justice system. In the overwhelming majority of states, most children cannot be charged criminally as adults until they attain age 18. The New York Family Court Act's establishment of age 16 as the threshold of adult criminal jurisdiction was deemed to be "tentative" by the relevant Constitutional Convention Commission and subject to change. Recent research has proven conclusively that children under the age of 18 have significantly diminished judgmental capabilities. Children in New York 16 years and over could benefit from programs and services now available only for children found to be delinquent in Family Court ~~and hence not convicted in a criminal court.~~

Business Law Section proposal re State Non-profit Corporation Law. This proposal developed out of a process initiated by the Business Law Section's Corporation Law Committee to review and reform of the current Not-for-profit Corporation Law and to establish the "Non-profit Corporation Law." The proposal seeks to improve selected provisions of the law, especially in light of the dramatic changes in corporate governance throughout the sector in response to the Sarbanes-Oxley Act. The non-profit sector in New York State is enormous and wide-ranging, consisting of foundations and charities, health care organizations, service agencies, clubs and neighborhood groups, cultural institutions, religious organizations, research and educational centers, chambers of commerce, economic development corporations, and more. The impact of the sector is vital to the people and economy of the State of New York.

This proposal is intended to adopt policies and practices commonly used throughout the United States, and to eliminate New York's outdated, idiosyncratic provisions of law.

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There were several positive developments with respect to this proposal in 2012. This being the case, the Committee recommends that this issue should remain a priority in 2013.

Support for the Legal Profession. A core mission of the New York State Bar Association is to represent the interests of the legal profession. In that regard, the Association will work to protect the independence of the judiciary, enhance access to the courts, promote affirmative legislative proposals that benefit the profession, and oppose those proposals that would burden it. The Association will work to ensure that attorneys are able to protect their clients' interests and effectively engage in the practice of law.¹

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II. 2012 Legislative Priorities recommended for removal from the list in 2013:

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The Committee recommends that the **Court Simplification/Reorganization** priority be removed. There has been no ~~signal from~~ action by the Governor or Chief Judge indicating that there is an interest in pursuing this proposal. Without their support the proposal has very little chance of success.

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III. New Recommendations for 2013:

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The Steering Committee on Legislative Priorities recommends that the Association's 2013 state legislative priorities include the following:

A. Sealing records re conviction of certain crimes. The report of the Criminal Justice Section (CJS), which was approved by the House of Delegates in January 2012, recommends support for the amendment of the Criminal Procedure Law and the Executive Law to permit the sealing of records of conviction re certain offenses. While there is currently a process in place to seal controlled substance felonies and misdemeanors, there exists no process for the sealing of non-controlled substance misdemeanors. Justification for such legislation: A conviction of a criminal offense can follow a person for the rest of his or her life. Even if he or she has fully reformed and committed no further criminal acts, the record still exists and often forms the basis for discrimination in employment or other areas. The CJS report recommends support for legislation that would allow a person who has been convicted of certain offenses to apply to the court to have their record sealed.

B. High-priority issues relating to New York's Family Courts. The Committee includes this topic among its recommendations as a place holder pending approval of the Family Court Task Force report. In particular, the Committee views increasing the number of Family Court judges as the top priority among the recommendations of the Task Force. The issue should be recognized and promoted in accordance with the proposed budget and administration of the Unified Court System.

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¹ There is an expectation that in the coming legislative session there will be some proposals in the context of municipal mandate relief that would make some modifications to the Tort System. Such proposals could be viewed as Association priorities in the context of the Support for the Legal Profession priority.



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