



NEW YORK STATE BAR ASSOCIATION

STATE LEGISLATIVE PRIORITIES
2021



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We appreciate the opportunity to present the New York State Bar Association's legislative priorities for 2021. We respectfully request our Executive and Legislature to consider the provisions we believe will be imperative to ensure access to justice and the integrity of our justice system.

The New York State Bar Association (NYSBA) has been the voice of the legal profession in New York for more than 140 years. Our mission is to shape the development of law, educate and inform the public, and respond to the demands of our diverse and ever changing legal profession. NYSBA advocates for state and federal legislation and works tirelessly to promote equal access to justice for all.

As we have experienced this year, we live in a fast-changing world with the State Legislature and Congress having to act quickly to respond to health, safety and political events. This document is intended to serve as a blueprint for NYSBA action for 2021, but we recognize the Association will need to be responsive to events and adjust priorities as necessary throughout the year. Flexibility may be critical. However the year develops, the Association will continue to be a staunch advocate for policies that promote our core values and mission to promote equal access to justice for all.

We welcome the opportunity to discuss these priorities with you.

Specific Policy Recommendations:

Covid-19 Pandemic Public Health:

On November 7th, NYSBA's House of Delegates approved three resolutions related to the Covid-19 pandemic. These resolutions recognize the broad power of state government to respond to public health threats under current law, but also note the relative absence of comprehensive legal structures to guide the use of that power. Therefore, NYSBA recommends:

- Reforms to public health law to strengthen capacities of the state to respond to public health emergencies;
- Legal reforms that address issues of equity and the disproportionate impact of the pandemic on disadvantaged and vulnerable populations and sub-populations, including communities of color, and as applicable to a public health emergency response in specific settings.
- Establishment of coordinated statewide testing and vaccine allocation and distribution plans, prioritizing frontline healthcare workers and individuals who are especially vulnerable by virtue of health or essential worker status. This is particularly important given the likelihood that the vaccine supply will be limited for a significant period of time.

Additional information can be found here: https://nysba.org/app/uploads/2020/11/Final-NYSBA-COVID-19-Resolutions_11-7-20-1.pdf

Reform New York State's Parole System:

NYSBA recommends reforms that will result in better decision-making as to whom should be granted parole and when parole should be revoked, reduce the costs associated with the parole process by reducing the number of parolees who are needlessly re-incarcerated, and increase public safety by improving the quality of decision-making and enabling parole officers to devote more resources and focus to the parolees most in need of supervision. The practice of arresting and holding large numbers of alleged "technical violators" negatively impacts county jails. It is estimated that in 2018, an average of 1,740 people were incarcerated each day in local jails in New York State on technical parole violations. The financial cost to the State of incarcerating all these technical parole violators has been estimated to be approximately \$359 million annually. Localities spend nearly \$300 million incarcerating these individuals awaiting disposition of charges. In addition, the Executive Law should be amended to create a system of "good-time credits," whereby persons on parole supervision would automatically reduce the period of supervision required to be served as a reward for periods of time spent under supervision with no parole violations.

Additional information can be found here: <https://nysba.org/app/uploads/2020/02/Task-Force-on-Parole-Systems-Report-June-2020-with-amendments-FINAL.pdf>

Cannabis:

In 2019, Governor Cuomo proposed the Cannabis Regulation and Taxation Act (CRTA). This act would have created a central office responsible for regulating licensing, cultivation, production, distribution, sale and taxation of all forms of legalized cannabis in New York State. The revenue generated from appropriate licensure and taxation of adult use marijuana could be of great significance to the State as it faces record budget shortfalls due to the Covid-19 pandemic. New York should adopt social equity provisions when crafting regulations and proceed distributions so as to encourage full participation by people from communities that have previously been disproportionately harmed by the marijuana prohibition and enforcement.

Additional information can be found here: <https://nysba.org/app/uploads/2020/03/Final-Cannabis-2019-1.pdf>

STATE LEGISLATIVE PRIORITIES FOR 2021

Permission for NY Admitted Attorneys to Practice without Residency or Office within NYS:

New York State Judiciary Law section 470 provides: *“A person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state.”* Originally enacted in 1862, and then updated in 1909, the statute is no longer needed. The concerns that led to the adoption of this section more than a century ago no longer exist, and the current statutory prohibition serves no purpose in today’s global environment. As this past year has demonstrated, the need for a physical office is no longer the norm as remote work has become standard operating procedure. NYSBA convened a task force to examine the issue of requirements on non-resident attorneys to practice in New York including service of process and jurisdiction. They concluded that repeal of section 470 would not create any significant difficulties arising from the lack of an attorney’s physical office within the state.

Additional information can be found here: <https://nysba.org/app/uploads/2020/02/Sub-report-page-470-report-agenda-item-11.pdf>

Reorganize the State Court System:

The state court system is comprised of 11 different trial courts -- a structure that has been described as “the most archaic and bizarrely convoluted” in the nation. New York’s Chief Judge Janet DiFiore has proposed that antiquated provisions in our state constitution be amended to modernize the system. NYSBA’s policy is consistent with the Chief Judge’s proposals, including the following: The Surrogate’s Court, County Court, Family Court, and the Court of Claims would all be merged into the Supreme Court and would no longer exist as separate courts. Successors to the former judges of those courts would serve terms that would be the length of current terms. The limitation of no more than one Supreme Court judge per 50,000 residents would be repealed. And, the Legislature would be given the power to create a 5th judicial department.

Legal Representation Issues:

- **Increase the rate of compensation for attorneys who provide mandated representation.** The last increase in assigned-counsel rates was in 2004, when they were increased to \$75 per hour, in and out of court, for all matters under County Law Section 722. That is, felonies, violation of probation in connection with a felony conviction, appeals, parole representation, family court representation, and post-judgment motions. Fees of \$60 per hour, in and out of court, are paid for representation of a person charged with a misdemeanor or lesser offence and no felony. Rates of compensation to assigned counsel should be increased to prevent the exodus of practitioners from panels across the state. The resulting shortage of lawyers to represent indigent defendants undermines access to justice in New York State.
- **Legal representation for persons in immigration matters.** New York State should establish a right to counsel for immigrants facing deportation. In the face of increased and indiscriminate immigration enforcement by the federal government, and given the complexities of our current immigration system, guaranteeing access to counsel is the only way to ensure that all New Yorkers have access to justice, equal protection, and due process under the law.

General Policy Position:

Integrity of New York’s Justice System and Support for the Profession:

The New York State Bar Association adheres to the settled principle that the courts are a co-equal branch of our government. An independent, well-functioning judicial system, accessible to all, is a bedrock component of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. As practitioners, we have a strong interest in the impact that the Judiciary Budget has on the operation of the court system. In order to ensure that the court system retains its status as a co-equal branch of government, the Governor and Legislature must appropriate adequate resources, which should be wisely and clearly administered by the courts, to ensure that they fulfill their essential role, especially during the coronavirus pandemic. 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, and promote affirmative legislative proposals that benefit the profession. It is just as important to oppose those proposals that would burden the profession. The Association will work to ensure that attorneys are able to protect their clients’ interests and effectively engage in the practice of law.

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