

Legislative Report

The session is over (or is it!) and it was an exhausting one. Most of the attention was focused on the budget, but there are a few bills that are floating around that look like they should become law.

One unfortunate bill that passed both houses of the legislature was a bill defining the new crime of “strangulation”. NYSACDL opposed the bill for a number of reasons, including the fact that the definition of strangulation was too broad and the intent was too general. We drafted a memo that recommended a number of changes to the bill. Our memo resulted in some changes from the original draft, which was even worse than what was ultimately passed. Even with those improvements, though, the bill seems constitutionally deficient and should be attacked on those grounds by NYSACDL members. Let us know if you make any such motion. See our memo on the NYSACDL website.

One helpful bill passed both houses this year, which has limited application but opens a door for changes that will implement Padilla. The new law would allow a person who can establish that he or she was a victim of trafficking to vacate prior convictions for prostitution. Admittedly, it is a narrow ground, but it is good that the legislature is starting to look at what mass plea bargaining combined with a long list of collateral consequences is doing to the population of the state. This bill is to be presented to the Governor for signing in the next couple of weeks.

Groundbreaking legislation was passed on the issue of indigent defense. For the first time, a state Office of Indigent Legal Services to be overseen by the Indigent Legal Services Board, will be developing standards for the provision of indigent defense services. There are nine appointments to this new board, which will oversee an office that does not provide services, but which will provide oversight over the services provided by the counties and the City of New York. The appointments to this new Board will take place very quickly and an Executive Director will be selected soon after that. Then the Office will start the work of developing a set of standards for indigent defense providers and evaluating each county as to whether they are meeting those standards. Presumably, the new Board will want to get input from NYSACDL and we will be ready to share our expertise in this area.

On an unrelated note, congratulations to our lobbyist, Sandra Rivera, for a victory on behalf of the Women’s Bar Association of the State of New York, another client of hers. After six years of hard work, Sandra was instrumental in getting No Fault divorce legislation passed by both houses this year. For those of us who wouldn’t even think of stepping into matrimonial courts, New York is the only state that still requires grounds to be established for a divorce. We are pleased to see our government relations representative succeeding, but it is also a good primer for how to get something big changed. The lesson is patience and perseverance. Year in and year out, Sandra brought people to talk to legislators, Democrats, Republicans, committee chairs and members, leaders and non-leaders in both houses and at the

Governor's office. When the opportunity was there, they were able to take advantage of it, having already forged alliances, educated legislators and become the recognized expert on the issue.

It is exactly this tactic that we are employing on the issues of criminal discovery and expungement/sealing for our clients. Board members go to Albany consistently with Ms. Rivera to discuss these issues and although movement is slow, we see a shift in attitude in Albany. In particular, there seems to be a recognition that there should be a roll-back on the egregious consequences of New York's criminal justice policy over the past couple of decades. This is evidenced quite clearly, for example, in the quick and decisive step taken by Albany to address the stop and frisk database that the New York City police has collected over the past few years.

It is obvious that elected officials in New York and their staff members view the NYSACDL as experts on substantive criminal law. And if the Democrats can hold the Senate for another election cycle, it will be a good time to talk about a number of issues that would make the criminal justice system more fair and balanced.

If there are any issues on your mind, feel free to contact board member and legislative chair Andy Kossover.