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I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sens. DeFRANCISCO, AKSHAR, AMEDORE, BRESLIN, COMRIE, GRIFO, HASSELL-THOMPSON, KAMINSKY, LATIMER, LITTLE, MARCHIONE, MURPHY, O'MARA, RANZENHOFER, RITCHIE, SERINO, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law, the executive law and the state finance law, in relation to indigent defense services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and declaration. It is a fundamental
2 right of all persons in the United States to be represented by counsel
3 in all criminal prosecutions. In the case of GIDEON V. WAINWRIGHT, 372
4 U.S. 335, the United States Supreme Court ruled that indigent persons
5 accused in state felony cases who were unable to afford counsel had a
6 constitutional right to be defended by an appointed attorney paid by the
7 state. Subsequently, the Supreme Court determined that indigent persons
8 accused of any criminal charge that could result in imprisonment, wheth-
9 er a felony or misdemeanor, are entitled to counsel at the expense of
10 the state.

11 New York state has chosen to fulfill its obligation to provide repre-
12 sentation to indigent persons accused of a crime by requiring each coun-
13 ty outside New York city and New York city to implement and fund a plan
14 to provide such representation. In 2006 the Commission on the Future of
15 Indigent Legal Services concluded that a system of county operated and
16 funded indigent defense services failed to satisfy the constitutional
17 obligation to protect the rights of indigent persons accused of a crime.
18 Such Commission recommended that funding for indigent legal services
19 come from the State's general fund rather than from the counties.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD06929-11-6

1 New York state has entered into an agreement to settle a class action
2 lawsuit that alleged deprivation of the right to counsel in five coun-
3 ties. The agreement acknowledges that the Office of Indigent Legal
4 Services and the Indigent Legal Services Board are authorized "to moni-
5 tor and study indigent legal services in the state, to recommend meas-
6 ures to improve those services, to award grant monies to counties to
7 support their indigent representation capability, and to establish
8 criteria for the distribution of such funds." While the settlement
9 agreement pertains to only five counties, its criteria establish a stan-
10 dard for providing indigent legal services that should apply statewide.

11 The legislature finds and declares that in all criminal proceedings
12 against people unable to afford counsel, New York state is constitu-
13 tionally required to provide public defense services. The legislature
14 further finds that the state is obligated to undertake initiatives to
15 improve the quality of indigent defense, ensure representation at
16 arraignment, implement caseload standards for providers of indigent
17 legal services, and implement statewide standards for determining eligi-
18 bility for mandated representation. Mandating counties to finance the
19 state's obligation to provide indigent legal services imposes a signif-
20 icant uncontrollable financial burden on counties dependent on real
21 property taxes to fund needed services, and subject to a state imposed
22 tax cap.

23 The legislature finds and declares that in order to fulfill its
24 constitutional obligation to provide indigent legal services, the state
25 shall pay counties the full amount necessary to ensure the delivery of
26 quality legal services for indigent criminal defendants in a consistent
27 manner throughout the State.

28 S 2. Section 722-e of the county law, as added by chapter 878 of the
29 laws of 1965, is amended to read as follows:

30 S 722-e. Expenses. All expenses for providing counsel and services
31 other than counsel hereunder shall be a county charge or in the case of
32 a county wholly located within a city a city charge to be paid out of an
33 appropriation for such purposes AND SHALL BE REIMBURSED BY THE STATE TO
34 THE COUNTY OR CITY PROVIDING SUCH SERVICES, PROVIDED, HOWEVER, THAT IN
35 THE STATE FISCAL YEAR BEGINNING:

36 (A) APRIL FIRST, TWO THOUSAND SEVENTEEN, THE STATE SHALL PROVIDE
37 REIMBURSEMENT FOR NOT LESS THAN TWENTY-FIVE PERCENT OF SUCH EXPENSES;
38 AND

39 (B) APRIL FIRST, TWO THOUSAND EIGHTEEN, THE STATE SHALL PROVIDE
40 REIMBURSEMENT FOR NOT LESS THAN THIRTY-FIVE PERCENT OF SUCH EXPENSES;
41 AND

42 (C) APRIL FIRST, TWO THOUSAND NINETEEN, THE STATE SHALL PROVIDE
43 REIMBURSEMENT FOR NOT LESS THAN FORTY-FIVE PERCENT OF SUCH EXPENSES; AND

44 (D) APRIL FIRST, TWO THOUSAND TWENTY, THE STATE SHALL PROVIDE
45 REIMBURSEMENT FOR NOT LESS THAN FIFTY-FIVE PERCENT OF SUCH EXPENSES; AND

46 (E) APRIL FIRST, TWO THOUSAND TWENTY-ONE, THE STATE SHALL PROVIDE
47 REIMBURSEMENT FOR NOT LESS THAN SIXTY-FIVE PERCENT OF SUCH EXPENSES; AND

48 (F) APRIL FIRST, TWO THOUSAND TWENTY-TWO, THE STATE SHALL PROVIDE
49 REIMBURSEMENT FOR NOT LESS THAN SEVENTY-FIVE PERCENT OF SUCH EXPENSES;
50 AND

51 (G) EVERY YEAR THEREAFTER, THE STATE SHALL PROVIDE REIMBURSEMENT FOR
52 THE FULL AMOUNT OF SUCH EXPENSES.

53 S 3. Subdivision 3 of section 832 of the executive law is amended by
54 adding a new paragraph (o) to read as follows:

55 (O) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO
56 CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE

1 PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT
2 CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR
3 ATTORNEYS PROVIDING MANDATED REPRESENTATION THAT ALLOW FOR MEANINGFUL
4 AND EFFECTIVE ASSISTANCE OF COUNSEL, AND (III) IMPROVE THE QUALITY OF
5 MANDATED REPRESENTATION.

6 S 4. Paragraphs (l) and (m) of subdivision 3 of section 832 of the
7 executive law, as added by section 1 of part E of chapter 56 of the laws
8 of 2010, are amended and a new paragraph (n) is added to read as
9 follows:

10 (l) to present findings and make recommendations for consideration by
11 the indigent legal services board established pursuant to section eight
12 hundred thirty-three of this article; [and]

13 (m) to execute decisions of the indigent legal services board estab-
14 lished pursuant to section eight hundred thirty-three of this article,
15 including the distribution of funds[.];

16 (N) TO REVIEW THE PUBLIC DEFENSE OPERATIONS OF ANY COUNTY FOR COMPLI-
17 ANCE WITH APPLICABLE PROFESSIONAL STANDARDS PROMULGATED BY THE OFFICE
18 AND TO ENSURE THAT RECIPIENTS OF SERVICES PROVIDED PURSUANT TO ARTICLE
19 EIGHTEEN-B OF THE COUNTY LAW ARE PROVIDED WITH MEANINGFUL AND EFFECTIVE
20 REPRESENTATION BEFORE MAKING REIMBURSEMENT PURSUANT TO SECTION SEVEN
21 HUNDRED TWENTY-TWO-E OF THE COUNTY LAW AND BEFORE MAKING PAYMENT PURSU-
22 ANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION NINETY-EIGHT-B OF
23 THE STATE FINANCE LAW; AND

24 S 5. Subdivision 3 of section 98-b of the state finance law, as
25 amended by section 2 of part E of chapter 56 of the laws of 2010, is
26 amended to read as follows:

27 3. Amounts distributed from such fund shall be limited to amounts
28 appropriated therefor and shall be distributed as follows:

29 (a) The office of court administration may expend a portion of the
30 funds available in such fund to provide assigned counsel paid in accord-
31 ance with section thirty-five of the judiciary law, up to an annual sum
32 of twenty-five million dollars.

33 (b) [An] IN ADDITION TO THE AMOUNTS PAID TO EACH COUNTY AND THE CITY
34 OF NEW YORK PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-E OF THE COUNTY
35 LAW AND IN ACCORDANCE WITH SECTIONS EIGHT HUNDRED THIRTY-TWO AND EIGHT
36 HUNDRED THIRTY-THREE OF THE EXECUTIVE LAW AN annual amount [of forty
37 million dollars shall be made available to the city of New York from
38 such fund for the provision of services pursuant to article eighteen-B
39 of the county law; provided that the city of New York shall continue to
40 provide at minimum the aggregate amount of funding for public defense
41 services including, but not limited to, the amount of funding for
42 contractors of public defense services and individual defense attorneys,
43 that it provided, pursuant to article eighteen-B of the county law
44 during its two thousand nine--two thousand ten fiscal year] SHALL BE
45 PAID TO SUCH COUNTIES AND CITY EQUAL TO THE AMOUNT PAID FROM SUCH FUND
46 TO SUCH COUNTIES AND CITY IN MARCH TWO THOUSAND TEN.

47 (c) [Within the first fifteen days of March two thousand eleven, each
48 county other than a county wholly contained within the city of New York,
49 shall receive ninety percent of the amount paid to such county in March
50 two thousand ten. Within the first fifteen days of March two thousand
51 twelve, each county other than a county wholly contained within the city
52 of New York shall receive seventy-five percent of the amount paid to
53 such county in March two thousand ten. Within the first fifteen days of
54 March two thousand thirteen, each county other than a county wholly
55 contained within the city of New York shall receive fifty percent of the
56 amount paid to such county in March two thousand ten. Within the first

1 fifteen days of March two thousand fourteen, each county other than a
2 county wholly contained within the city of New York shall receive twen-
3 ty-five percent of the amount paid to such county in March two thousand
4 ten. For all state fiscal years following the two thousand thirteen--two
5 thousand fourteen fiscal year, there shall be no required annual
6 payments pursuant to this paragraph. Notwithstanding the provisions of
7 this paragraph, for each of the four required payments made to counties
8 within the first fifteen days of March two thousand eleven, two thousand
9 twelve, two thousand thirteen and two thousand fourteen, Hamilton and
10 Orleans counties shall receive such percentage payments based on the
11 amounts that each county would have received in March two thousand ten
12 had it satisfied the maintenance of effort requirement set forth in
13 paragraph (c) of subdivision four of this section in effect on such
14 date.

15 (d)] Remaining amounts within such fund, after accounting for annual
16 payments required in paragraphs (a)[,] AND (b) [and (c)] of this subdi-
17 vision and subparagraph (iii) of paragraph (a) of subdivision two of
18 this section shall be distributed in accordance with sections eight
19 hundred thirty-two and eight hundred thirty-three of the executive law.

20 S 6. This act shall take effect April 1, 2017.