S T A T E  O F  N E W  Y O R K

8793

2009-2010 Regular Sessions

I N  A S S E M B L Y

June 9, 2009

Introduced by M. of A. LENTOL, GOTTFRIED, PAULIN, CAHILL, CLARK, CANESTRARI, ENGLEBRIGHT, JACOBS, DINOWITZ, POWELL, PEOPLES, KAVANAGH, ROSENTHAL, BENEDETTO, WEINSTEIN, JOHN, SCHIMEL, LANCMAN, O'DONNELL, LATIMER -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, AUBRY, BACALLES, BENJAMIN, BING, BOYLAND, BRADLEY, BRENNAN, BRODSKY, BROOK-KRASNY, CYMBROWITZ, DenDEKKER, ESPAILLAT, FARRELL, FIELDS, GANTT, GIGLIO, GLICK, GORDON, HEASTIE, HIKIND, HOOPER, HOYT, JAFFEE, JEFFRIES, KELLNER, LAVINE, LIFTON, V. LOPEZ, LUPARDO, MAGEE, MAGNARELLI, MAISEL, MARKEY, McENENY, MILLMAN, MORELLE, ORTIZ, PARMENT, PERRY, PHEFFER, PRETLOW, REILLY, N. RIVERA, P. RIVERA, ROBINSON, SCARBOROUGH, SCHROEDER, SCOZZAFAVA, SWEENEY, THIELE, TITONE, TITUS, TOWNS, TOWNSEND, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, the county law, and the state finance law, in relation to establishing the public defense act of 2009; and to repeal articles 18-A and 18-B of the county law relating thereto

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

Section 1. The judiciary law is amended by adding a new article 15-A to read as follows:

ARTICLE 15-A

PUBLIC DEFENSE ACT OF 2009

SECTION 499-A. SHORT TITLE.
499-B. PURPOSES.
499-C. DEFINITIONS.
499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED.
499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICATIONS.
499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION OF CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPENSATION.

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

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499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND RESPONSIBILITIES.
499-H. STATE DEFENDER.
499-I. ASSISTANCE BY STATE OFFICES, DEPARTMENTS, BOARDS, DIVISIONS AND COMMISSIONS AND FROM LOCALITIES AND PUBLIC DEFENSE PROVIDERS.
499-J. INDEPENDENCE; FISCAL DISCIPLINE.
499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION.
499-L. ENFORCEMENT OF STANDARDS; PROHIBITION.
499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION.

S 499-A. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AS AND MAY BE CITED AS THE "PUBLIC DEFENSE ACT OF 2009".

S 499-B. PURPOSES. THE PURPOSES OF THIS ARTICLE ARE TO: 1. IMPROVE THE QUALITY OF PUBLIC DEFENSE SERVICES STATEWIDE BY IMPLEMENTING STATE OVERSIGHT, FUNDING AND CONTROL OF PUBLIC DEFENSE SERVICES, WHILE PROVIDING FOR THE PLANNING AND IMPLEMENTATION OF THE STATE'S ASSUMPTION OF THESE RESPONSIBILITIES IN A MANNER THAT IS RESPONSIVE TO REGIONAL AND COMMUNITY NEEDS;

2. ENSURE THAT PUBLIC DEFENSE REPRESENTATION IS PROVIDED WITHIN A TRULY INDEPENDENT ATMOSPHERE FREE FROM POLITICAL INFLUENCE AND CONFLICTS OF INTEREST;

3. LIMIT THE FISCAL BURDEN ON LOCALITIES BY IMPLEMENTING FULL STATE ADMINISTRATION AND FUNDING OF PUBLIC DEFENSE SERVICES SUBJECT TO AN EQUITABLE FIXED ANNUAL OFFSET CONTRIBUTION;

4. GUARANTEE THAT STATE AND LOCAL FUNDS FOR PUBLIC DEFENSE SERVICES ARE MANAGED IN AN EFFICIENT AND COST EFFECTIVE MANNER WITHOUT SACRIFICING QUALITY OF REPRESENTATION;

5. ESTABLISH A PUBLIC DEFENSE COMMISSION AS A PUBLIC BENEFIT CORPORATION RESPONSIBLE FOR OVERSEEING PUBLIC DEFENSE SERVICES AND PLANNING AND IMPLEMENTING STATE ADMINISTRATION OF PUBLIC DEFENSE SERVICES THROUGHOUT THE STATE; ENSURING THAT SUCH SERVICES ARE DELIVERED BY QUALIFIED AND COMPETENT ATTORNEYS IN A MANNER THAT IS FAIR, EFFECTIVE AND UNIFORM; AND DEVELOPING POLICIES, PROCEDURES AND STANDARDS FOR THE DELIVERY OF SUCH SERVICES; AND

6. ENHANCE OVERSIGHT OF THE DELIVERY OF PUBLIC DEFENSE SERVICES BY GENERATING RELIABLE STATISTICAL INFORMATION AND DATA NEEDED TO EVALUATE THE SERVICES PROVIDED AND FUNDS EXPENDED.

S 499-C. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE: 1. "CLIENT" MEANS ANY PERSON WHO RECEIVES OR HAS RECEIVED PUBLIC DEFENSE SERVICES.

2. "CLIENT COMMUNITY" MEANS CLIENTS, THEIR FAMILIES, LOCAL NEIGHBORHOODS IN WHICH A SIGNIFICANT NUMBER OF CLIENTS LIVE AND ORGANIZATIONS DEDICATED TO PROVIDING SUPPORT OR ADVOCACY TO CLIENTS, THEIR FAMILIES AND LOCAL NEIGHBORHOODS.

3. "COMMISSION" MEANS THE THIRTEEN MEMBERS COMPRISING THE PUBLIC DEFENSE COMMISSION.

4. "ELIGIBLE PERSON" MEANS ANY PERSON ELIGIBLE TO RECEIVE PUBLIC DEFENSE SERVICES.

5. "LOCALITY" MEANS ANY REGION IN NEW YORK, INCLUDING A COUNTY, A PART OF A COUNTY OR A GROUP OF COUNTIES OR PARTS OF COUNTIES EXCEPT THAT WITHIN A COUNTY IN THE CITY OF NEW YORK SUCH TERM SHALL MEAN THE CITY OF NEW YORK.

6. "PUBLIC DEFENSE SERVICES" MEANS PUBLICLY-FINANCED LEGAL REPRESENTATION, INCLUDING THE SERVICES OF ATTORNEYS AND/OR ALL INVESTIGATIVE AND NECESSARY ANCILLARY SERVICES PROVIDED TO PERSONS UNABLE TO AFFORD THEM AND SUSPECTED OF, ACCUSED OF, CHARGED WITH, OR CONVICTED OF, COMMITTING

A FELONY, MISDEMEANOR, OR THE BREACH OF ANY LAW OF THIS STATE OR OF ANY LAW, LOCAL LAW OR ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT IS AUTHORIZED UPON CONVICTION THEREOF, INCLUDING REPRESENTATION AT THE PRETRIAL, TRIAL, APPELLATE AND POST-CONVICTION STAGES IN CRIMINAL CASES, OR ENTITLED TO REPRESENTATION UNDER SECTION TWO HUNDRED SIXTY-TWO OF THE FAMILY COURT ACT OR OTHERWISE ENTITLED TO PUBLIC REPRESENTATION IN FAMILY COURT, SUPREME COURT, SURROGATE'S COURT, PAROLE PROCEEDINGS AND RELATED APPEALS UNDER THE EXECUTIVE LAW, IN CLASSIFICATION PROCEEDINGS UNDER ARTICLE SIX-C OF THE CORRECTION LAW AND RELATED APPEALS AND IN ALL OTHER CASES WHERE COUNSEL IS OR MAY BE PROVIDED FOR BY LAW.

7. "PUBLIC DEFENSE SERVICE PROVIDER" OR "SERVICE PROVIDER" MEANS AN ENTITY OR INDIVIDUAL AUTHORIZED BY LAW TO PROVIDE PUBLIC DEFENSE SERVICES.

S 499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED. 1. THERE IS HEREBY ESTABLISHED THE NEW YORK STATE PUBLIC DEFENSE COMMISSION, A BODY CORPORATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

2. THE COMMISSION SHALL RECEIVE AN APPROPRIATION FROM THE INDIGENT LEGAL SERVICES FUND, ESTABLISHED PURSUANT TO SECTION NINETY-EIGHT-B OF THE STATE FINANCE LAW, IN THE AMOUNT OF THREE MILLION DOLLARS FOR FISCAL YEAR TWO THOUSAND NINE-TWO THOUSAND TEN TO ESTABLISH AND STAFF AN OFFICE, ADAPT THE PUBLIC DEFENSE CASE MANAGEMENT SYSTEM, CONTRACT AND CONSULT WITH COMPETENT EVALUATORS, EXPERTS, AND THE NEW YORK STATE DEFENDERS ASSOCIATION PUBLIC DEFENSE BACKUP CENTER, BEGIN THE ESTABLISHMENT OF APPROPRIATE PRIVATE-PUBLIC PARTNERSHIPS AND DEVELOP A WORK PLAN FOR AND OTHERWISE CARRY OUT ITS GENERAL POWERS, DUTIES AND RESPONSIBILITIES AS DEFINED IN THIS ARTICLE.

3. THE COMMISSION SHALL OPERATE INDEPENDENTLY FOR THE IMPROVEMENT OF THE PUBLIC DEFENSE SYSTEM AND SHALL BE FREE FROM POLITICAL INTERFERENCE.

4. THE BUDGET FOR THE COMMISSION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE SALARIES OF ALL COMMISSION PERSONNEL, AN ALLOCATION FOR OFFICE EXPENSES, FURNITURE, COMPUTERS, LIBRARY, AND AN ALLOCATION FOR SUCH ADDITIONAL ITEMS AS MAY BE NECESSARY FOR THE COMMISSION TO PERFORM ITS FUNCTIONS PURSUANT TO THIS ARTICLE.

5. THE COMMISSION WILL BE PERFORMING AN ESSENTIAL GOVERNMENTAL FUNCTION IN THE EXERCISE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE AND THE COMMISSION SHALL NOT BE REQUIRED TO PAY TAXES OR ASSESSMENTS UPON ANY OF THE PROPERTY ACQUIRED BY IT OR UNDER ITS JURISDICTION AND CONTROL.

6. ALL CONTRIBUTIONS MADE TO THE COMMISSION WHETHER BY GIFT, DEVISE, GRANT, DONATION OR BEQUEST SHALL QUALIFY AS DEDUCTIONS IN COMPUTING THE NET TAXABLE INCOME OF THE DONOR FOR THE PURPOSE OF INCOME TAX IMPOSED BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

7. THE COMMISSION SHALL PROTECT THE CONFIDENCES AND SECRETS OF CLIENTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO RECORD OR REPORT SHALL BE DEEMED DEFICIENT BECAUSE OF THE OMISSION OF INFORMATION, THE PROVISION OF WHICH WOULD RESULT IN THE DISCLOSURE OF SUCH CONFIDENCES OR SECRETS, OR WOULD OTHERWISE COMPROMISE THE INTEREST OF ANY CLIENT.

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSION SHALL BE EXEMPT FROM THE APPLICATION OF ANY PROVISION OF ARTICLES SIX AND SEVEN OF THE PUBLIC OFFICERS LAW.

S 499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICATIONS. 1. THE COMMISSION SHALL BE COMPOSED OF THIRTEEN MEMBERS WHO SHALL BE SELECTED WITH REGARD FOR THE GEOGRAPHIC, RACIAL, ETHNIC AND GENDER MAKE-UP OF THE STATE AND THE CULTURAL DIVERSITY OF THE STATE'S PUBLIC DEFENSE

CLIENTS. A PERSON APPOINTED TO THE COMMISSION MUST HAVE A DEMONSTRABLE COMMITMENT TO QUALITY REPRESENTATION OF LOWER INCOME PEOPLE, TO IMPROVING THE PUBLIC DEFENSE SYSTEM AND TO THE PRINCIPLE OF INDEPENDENCE OF THE DEFENSE FUNCTION. WHILE SERVING ON THE COMMISSION, NO MEMBER OF THE COMMISSION SHALL BE A JUDGE, PROSECUTOR, PUBLIC DEFENSE PROVIDER, LAW ENFORCEMENT OFFICER, COUNTY ATTORNEY, ATTORNEY GENERAL, UNITED STATES ATTORNEY, OR EMPLOYEE THEREOF, OR A FULL TIME EMPLOYEE OF THE STATE OR ANY POLITICAL SUBDIVISION, OR OF ANY BOARD, COMMISSION, AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

2. THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED BY THE GOVERNOR AS FOLLOWS:

A. THREE ATTORNEYS WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOMINEES SUBMITTED BY THE CHIEF JUDGE OF THE NEW YORK STATE COURT OF APPEALS AS FOLLOWS:

(I) ONE FROM NOT LESS THAN THREE NOMINEES WITH SUBSTANTIAL EXPERIENCE IN THE HANDLING OF CRIMINAL TRIALS OR APPEALS;

(II) ONE FROM NOT LESS THAN THREE NOMINEES WITH SUBSTANTIAL EXPERIENCE IN THE HANDLING OF FAMILY-RELATED TRIALS OR APPEALS; AND

(III) ONE FROM NOT LESS THAN THREE NOMINEES DRAWN FROM A LIST OF INDIVIDUALS RECOMMENDED TO THE CHIEF JUDGE BY THE DEANS OF THE STATE'S LAW SCHOOLS;

B. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE TEMPORARY PRESIDENT OF THE STATE SENATE;

C. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE SPEAKER OF THE STATE ASSEMBLY;

D. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION WHO HAS SUBSTANTIAL EXPERIENCE IN THE DELIVERY OF PUBLIC DEFENSE SERVICES FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE MINORITY LEADER OF THE STATE SENATE;

E. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION WHO HAS SUBSTANTIAL EXPERIENCE IN ADULT RESPONDENT REPRESENTATION IN FAMILY COURT FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE MINORITY LEADER OF THE STATE ASSEMBLY;

F. ONE ATTORNEY IN PRIVATE PRACTICE WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE NEW YORK STATE BAR ASSOCIATION;

G. ONE PERSON WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION;

H. ONE PERSON WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE NEW YORK STATE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS;

I. ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF A RACIAL MINORITY POPULATION IN NEW YORK FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND;

J. ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF A RACIAL MINORITY POPULATION IN NEW YORK FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE LATINO JUSTICE PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND; AND

K. ONE PERSON WITH EXPERIENCE AS A CONSUMER OF PUBLIC DEFENSE SERVICES WHO, HAVING BEEN EXONERATED OR HAVING PAID HIS OR HER DEBT TO SOCIETY BY SERVICE OF A SENTENCE, HAS DEMONSTRATED A COMMITMENT TO THE IMPROVEMENT

OF LEGAL SERVICES FOR THOSE UNABLE TO AFFORD COUNSEL FROM NOT LESS THAN THREE NOMINEES SUBMITTED BY THE FORTUNE SOCIETY.

3. THE APPOINTMENT OF MEMBERS OF THE COMMISSION SHALL BE COMPLETED WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE.

S 499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION OF CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPENSATION. 1. MEMBERS OF THE COMMISSION SHALL SERVE TERMS OF FOUR YEARS; PROVIDED, HOWEVER, THAT THE MEMBERS INITIALLY APPOINTED SHALL SERVE THE FOLLOWING TERMS: A. THE THREE MEMBERS APPOINTED PURSUANT TO PARAGRAPHS I, J, AND K OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, ONE YEAR; B. THE THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH A AND PARAGRAPH F OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, TWO YEARS; C. THE THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH A AND PARAGRAPHS G AND H OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, THREE YEARS; AND D. THE FOUR MEMBERS APPOINTED PURSUANT TO PARAGRAPHS B, C, D AND E OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, FOUR YEARS.

2. MEMBERS OF THE COMMISSION SHALL SELECT BY MAJORITY VOTE A CHAIRPERSON FROM AMONG THEIR RANKS FOR A TERM OF TWO YEARS.

3. MEMBERS OF THE COMMISSION MAY BE RE-APPOINTED TO ADDITIONAL TERMS AND SHALL SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED.

4. VACANCIES ON THE COMMISSION SHALL BE FILLED PROMPTLY AND FOR THE REMAINDER OF THE TERM IN THE MANNER PROVIDED FOR BY THE ORIGINAL APPOINTMENT.

5. MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT PAY BUT SHALL BE REIMBURSED FOR THEIR REASONABLE, ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

S 499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND RESPONSIBILITIES. THE COMMISSION SHALL HAVE THE POWER, DUTY AND RESPONSIBILITY:

1. COMMENCING APRIL FIRST, TWO THOUSAND TWELVE, AND IN ACCORDANCE WITH THE STRATEGIC PLAN PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, TO OVERSEE AND ADMINISTER ALL PUBLIC DEFENSE SERVICES IN THE STATE THROUGH THE COMBINED APPLICATION OF SUCH STATE FUNDS AS MAY BE APPROPRIATED THEREFOR AND FIXED ANNUAL LOCAL OFFSET CONTRIBUTION MONIES AS DESCRIBED IN SECTION FOUR HUNDRED NINETY-NINE-M OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO MONIES FROM THE INDIGENT LEGAL SERVICES FUND;

2. TO ENGAGE IN AN EVALUATION OF EXISTING PUBLIC DEFENSE SYSTEMS AND SERVICE PROVIDERS IN THE STATE BASED ON THE "STANDARDS FOR PROVIDING MANDATED REPRESENTATION" AS ADOPTED BY THE NEW YORK STATE BAR ASSOCIATION'S HOUSE OF DELEGATES AND THE "STANDARDS FOR PROVIDING CONSTITUTIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK STATE" AS ADOPTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION'S BOARD OF DIRECTORS, AND SUCH OTHER STATE AND NATIONAL STANDARDS AS THE COMMISSION DEEMS APPROPRIATE, AND DEVELOP AND OVERSEE A SELF-EVALUATION PROCESS FOR EXISTING PUBLIC DEFENSE PROVIDERS;

3. TO CALCULATE THE COST OF PUBLIC DEFENSE SERVICES, INCLUDING BUT NOT LIMITED TO THE TOTAL ACTUAL COST OF THE CURRENT SYSTEM FOR PROVIDING SUCH SERVICES; THE PROJECTED COST WHEN THE SYSTEM IS SUBJECTED TO MEANINGFUL ECONOMIES OF SCALE, REDUCTION OF WASTE, AND ELIMINATION OF DUPLICATION; AND THE PROJECTED ADDITIONAL COSTS REQUIRED TO ENSURE COMPLIANCE WITH NATIONAL, ETHICAL AND STATE PROFESSIONAL STANDARDS AND BEST PRACTICES;

4. IN CONSULTATION WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION AND THE FINANCING TRANSITION ADVISORY COUNCIL ESTABLISHED BY SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTICLE, TO PROMULGATE A STRATEGIC PLAN FOR THE ADMINISTRATION AND FUNDING OF TRIAL, APPELLATE, FAMILY AND CONFLICT PUBLIC DEFENSE SERVICES THROUGHOUT THE STATE. SUCH PLAN SHALL BE CONSISTENT WITH THE PROVISIONS AND FURTHER THE PURPOSES OF THIS ARTICLE AND SHALL, AT A MINIMUM, PROVIDE FOR: A. THE DESIGNATION OF GEOGRAPHIC REGIONS TO ALLOW FOR THE MORE EFFICIENT AND EFFECTIVE PROVISION OF PUBLIC DEFENSE SERVICES, PROVIDED, HOWEVER, THAT REGIONS ENCOMPASSING MULTIPLE COUNTIES SHALL INCLUDE AT LEAST ONE STAFFED OFFICE IN EACH COUNTY SO AS TO PROVIDE ADEQUATE ACCESS BY CLIENTS TO PUBLIC DEFENSE SERVICES; B. THE AUTHORITY OF THE COMMISSION TO CONTRACT WITH NOT-FOR-PROFIT PUBLIC DEFENSE SERVICE PROVIDERS TO PROVIDE PUBLIC DEFENSE SERVICES TO CLIENTS; AND C. THE AUTHORITY OF THE COMMISSION TO DIRECTLY EMPLOY CRIMINAL DEFENSE ATTORNEYS, INVESTIGATORS AND OTHER PROFESSIONAL AND SUPPORT STAFF TO PROVIDE PUBLIC DEFENSE SERVICES TO CLIENTS.

5. COMMENCING TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE AND UNTIL MARCH THIRTY-FIRST, TWO THOUSAND TWELVE, WHERE THE COMMISSION DEEMS IT APPROPRIATE, TO ENTER INTO AN AGREEMENT WITH ANY COUNTY THAT SEEKS TO DISCONTINUE ITS PLAN FOR PROVIDING COUNSEL AND RELATED SERVICES PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW;

6. TO ADOPT PROCEDURES FOR THE IMPLEMENTATION OF SUBDIVISION SIX OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW;

7. TO ESTABLISH THE QUALIFICATIONS, DUTIES AND COMPENSATION FOR THE STAFF OF THE COMMISSION AND APPOINT THE STATE DEFENDER IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-NINE-H OF THIS ARTICLE, AND CONFLICT DEFENDER, IF ANY;

8. TO ESTABLISH AN ADVISORY COMMITTEE WHOSE MEMBERS SHALL INCLUDE PUBLIC DEFENSE PROVIDERS, REPRESENTATIVES FROM VOLUNTARY ORGANIZATIONS SUCH AS BAR ASSOCIATIONS, OTHER CRIMINAL JUSTICE PROFESSIONALS, AND CLIENT COMMUNITY REPRESENTATIVES TO ADVISE THE COMMISSION ABOUT DEFICIENCIES IN PUBLIC DEFENSE SERVICES, POTENTIAL WAYS TO CORRECT THOSE DEFICIENCIES AND THE COMMISSION'S OVERSIGHT AND PLANNING FUNCTIONS;

9. SUBJECT TO THE PROHIBITION SET FORTH IN SECTION FOUR HUNDRED NINETY-NINE-L OF THIS ARTICLE, TO ESTABLISH AND ENFORCE STATEWIDE STANDARDS FOR PUBLIC DEFENSE SERVICES TO ENSURE THAT QUALITY REPRESENTATION IS PROVIDED BY COMPETENT COUNSEL IN A MANNER THAT IS ZEALOUS, FAIR AND CONSISTENT THROUGHOUT THE STATE. SUCH STANDARDS SHALL REFLECT NATIONAL AND STATE PROFESSIONAL GUIDELINES AND BEST PRACTICES;

10. TO PREPARE REPORTS, IN CONJUNCTION WITH THE STATE DEFENDER, WHICH SHALL INCLUDE DETAILED EXPENDITURE AND CASELOAD DATA, DESCRIBE, EVALUATE AND ANALYZE THE NEEDS OF THE PUBLIC DEFENSE SYSTEM AND MAKE RECOMMENDATIONS FOR STATUTORY CHANGES, INCLUDING CHANGES IN THE CRIMINAL PROCEDURE LAW, THE PENAL LAW, THE FAMILY COURT ACT, AND RELATED STATUTES AND COURT RULES WHICH MAY BE APPROPRIATE FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, THE REHABILITATION AND RE-ENTRY OF OFFENDERS AND OTHER RELATED OBJECTIVES. COMMENCING IN TWO THOUSAND TEN, ONE SUCH REPORT SHALL BE SUBMITTED ON OR BEFORE THE FIFTEENTH DAY OF SEPTEMBER OF EACH YEAR TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE STATE SENATE, THE SPEAKER OF THE STATE ASSEMBLY, THE RESPECTIVE MINORITY LEADERS OF BOTH HOUSES, THE CHIEF JUDGE OF THE COURT OF APPEALS AND THE CHIEF ADMINISTRATIVE JUDGE OF THE UNIFIED COURT SYSTEM; AND

11. TO PROPOSE SUCH AMENDMENTS TO EXISTING LAW AS MAY BE NECESSARY AND APPROPRIATE TO EFFECTUATE THE PROVISIONS AND INTENT OF THIS ARTICLE AND DO ALL THINGS NECESSARY, CONVENIENT OR DESIRABLE, INCLUDING ANCILLARY AND INCIDENTAL ACTIVITIES, TO CARRY OUT ITS PURPOSES AND FOR THE EXERCISE OF THE POWERS GRANTED IN THIS ARTICLE.

S 499-H. STATE DEFENDER. 1. THE STATE DEFENDER APPOINTED PURSUANT TO SUBDIVISION SEVEN OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS ARTICLE SHALL BE AN ATTORNEY, SHALL SERVE AS THE CHIEF EXECUTIVE OFFICER OF THE COMMISSION, SHALL HAVE THE AUTHORITY, IN CONSULTATION WITH THE COMMISSION, TO HIRE ATTORNEYS AND OTHER STAFF AND TO TAKE ALL OTHER SUCH ACTIONS AS THE STATE DEFENDER AND THE COMMISSION DEEM NECESSARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE. IN ADDITION, THE STATE DEFENDER SHALL HAVE COMPLETE AUTHORITY, TO THE EXCLUSION OF ALL OTHERS, TO SUPERVISE THE PERSONNEL OF THE COMMISSION EXCEPT FOR THE CONFLICT DEFENDER, IF ANY, AND RELATED CONFLICT STAFF WITH REGARD TO CASE-RELATED MATTERS.

2. SALARY. A. THE SALARY OF THE STATE DEFENDER SHALL NOT BE LESS THAN THE COMPENSATION SET FOR THE HIGHEST PAID DISTRICT ATTORNEY IN THE STATE.

B. ALL STAFF MEMBERS EMPLOYED BY THE COMMISSION UNDER THIS ARTICLE ARE ENTITLED TO FULL SALARIES, WAGES, BENEFITS AND PROMOTIONAL OPPORTUNITIES AS ACCORDED TO OTHER FULL-TIME STATE EMPLOYEES AND/OR MANAGEMENT CONFIDENTIAL EMPLOYEES OF THE STATE OF NEW YORK.

C. THE COMMISSION SHALL DEVELOP A PLAN TO ESTABLISH FOR PUBLIC DEFENSE PROVIDERS NOT LESS THAN COMPARABLE RATES FOR COMPARABLE POSITIONS WITHIN THE DISTRICT ATTORNEYS OFFICES OR WITHIN THAT OF OTHER GOVERNMENTAL ADVERSARIES.

S 499-I. ASSISTANCE BY STATE OFFICES, DEPARTMENTS, BOARDS, DIVISIONS AND COMMISSIONS AND FROM LOCALITIES AND PUBLIC DEFENSE PROVIDERS. AT THE REQUEST OF THE COMMISSION, ALL OTHER STATE OFFICES, DEPARTMENTS, BOARDS, DIVISIONS AND COMMISSIONS, LOCALITIES AND PUBLIC DEFENSE PROVIDERS SHALL RENDER SUCH INFORMATION, ASSISTANCE AND COOPERATION AS SHALL BE WITHIN THEIR LEGAL AUTHORITY IN FURTHERANCE OF THE PURPOSES OF THIS ARTICLE.

S 499-J. INDEPENDENCE; FISCAL DISCIPLINE. THE COMMISSION, WHILE MAINTAINING THE INDEPENDENCE OF THE DEFENSE FUNCTION, PROTECTING THE CONFIDENTIALITY OF CLIENT RECORD KEEPING, AND ASSURING THE INTEGRITY OF PROCEDURES SUPPORTING THE REPRESENTATION OF PUBLIC DEFENSE CLIENTS, SHALL, IN CONSULTATION WITH THE DIVISION OF THE BUDGET AND THE FINANCING TRANSITION ADVISORY COUNCIL ESTABLISHED BY SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTICLE, ADOPT SUCH POLICIES AND PROCEDURES AS MAY BE NECESSARY AND APPROPRIATE TO ENSURE THAT THE COMMISSION OPERATES WITH A DEGREE OF FISCAL DISCIPLINE AND ACCOUNTABILITY COMPARABLE TO THAT REQUIRED OF EXECUTIVE AND OTHER AGENCIES OF THE STATE.

S 499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION. 1. THERE SHALL BE ESTABLISHED FOR A PERIOD OF THREE YEARS A FINANCING TRANSITION ADVISORY COUNCIL CONSISTING OF FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR TO SERVE AS AN ADVISORY BODY TO THE COMMISSION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. EIGHT OF THE MEMBERS SHALL BE APPOINTED ON THE BASIS OF THEIR PROFESSIONAL KNOWLEDGE OF THE WORKINGS OF COUNTY OR CITY GOVERNMENT, THEIR EXPERIENCE AS A COUNTY OFFICIAL IN THE PROVISION OF COUNTY SERVICES, THEIR EXPERIENCE AS AN OFFICIAL OR STAFF MEMBER OF THE NEW YORK STATE ASSOCIATION OF COUNTIES OR OTHERWISE ON THE BASIS OF THEIR ADVOCACY FOR THE RIGHTS AND INTERESTS OF LOCALITIES. AT LEAST FIVE OF THE MEMBERS SHALL BE APPOINTED ON THE BASIS OF THEIR EXPERIENCE IN THE ADMINISTRATION OF STATE AID TO LOCALITIES, THEIR PROFESSIONAL KNOWLEDGE OF THE METHODS AND PRACTICES OF THE NEW YORK STATE DIVISION OF THE BUDGET, THEIR EXPERIENCE IN DESIGNING STATE AID

PROGRAMS, THEIR EXPERTISE IN DESIGNING AND CALCULATING REVENUE STREAMS, OR SIMILAR STATE BUDGET EXPERTISE. IN MAKING SUCH APPOINTMENTS, THE GOVERNOR SHALL ENDEAVOR TO INSURE THAT THE OVERALL MEMBERSHIP OF THE COUNCIL ADEQUATELY REFLECTS THE RURAL, SUBURBAN AND URBAN AREAS OF THE STATE.

2. MEMBERS OF THE COUNCIL SHALL BE APPOINTED FOR A TERM OF THREE YEARS. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS FOR THE REMAINDER OF ANY UNEXPIRED TERM.

3. THE GOVERNOR SHALL DESIGNATE ONE MEMBER OF THE COUNCIL AS ITS CHAIR TO SERVE AS SUCH AT THE PLEASURE OF THE GOVERNOR.

4. COUNCIL MEMBERS SHALL NOT RECEIVE COMPENSATION, BUT EACH MEMBER SHALL BE ENTITLED TO RECEIVE HIS OR HER REASONABLE AND NECESSARY EXPENSES INCURRED IN CONNECTION WITH HIS OR HER SERVICES AS A MEMBER WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

5. THE COUNCIL SHALL HAVE AN EXECUTIVE SECRETARY DESIGNATED BY THE CHAIR OF THE COMMISSION. THE CHAIR OF THE COMMISSION MAY ALSO ASSIGN SUCH OTHER COMMISSION OFFICERS AND EMPLOYEES AS THE COMMISSION DEEMS PRUDENT TO ASSIST THE COUNCIL IN THE PERFORMANCE OF ITS DUTIES.

6. THE COUNCIL SHALL ADVISE AND ASSIST THE COMMISSION IN DEVELOPING POLICIES, PLANS AND PROGRAMS TO CARRY OUT A SEAMLESS TRANSITION FROM A PRIMARILY LOCALLY-FUNDED PUBLIC DEFENSE SYSTEM TO A PRIMARILY STATE-FUNDED PUBLIC DEFENSE SYSTEM ADMINISTERED EXCLUSIVELY BY THE COMMISSION. THE COUNCIL MAY CONSIDER ANY MATTER RELATED TO ENSURING THAT THE LONG-TERM RELATIONSHIP BETWEEN THE STATE AND LOCALITIES REGARDING THE ADMINISTRATION OF PUBLIC DEFENSE SERVICES BE EQUITABLE, TRANSPARENT, FAIR AND PERMANENT AND SHALL ADVISE THE COMMISSION ON ANY SUCH MATTER, INCLUDING BUT NOT LIMITED TO:

A. DEVISING A FAIR AND EQUITABLE FORMULA FOR FIXING AND PERMANENTLY CAPPING OFFSET CONTRIBUTIONS BY LOCALITIES TO THE TOTAL COST OF PROVIDING PUBLIC DEFENSE SERVICES, WHICH FORMULA SHALL, IF ADOPTED BY THE COMMISSION, BECOME EFFECTIVE NO EARLIER THAN TWO THOUSAND TWENTY-TWO. SUCH FORMULA SHOULD, AT A MINIMUM, ADDRESS AND CORRECT CURRENT INEQUITIES IN THE COMPARATIVE NET LOCAL EXPENDITURES MADE BY COUNTIES HISTORICALLY AND CURRENTLY IN PROVIDING SERVICES PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW, AND INCLUDE RECOMMENDATIONS FOR METHODS TO ASSURE COUNTIES OF THE BONA FIDES OF THE STATE IN ITS LONG-TERM CAPPING OF THE FISCAL LIABILITY OF LOCALITIES;

B. IDENTIFICATION OF INDIRECT COSTS NOW BORNE BY COUNTIES WHICH SHOULD BECOME STATE CHARGES AT THE TIME OF THE COMMISSION'S ASSUMPTION OF RESPONSIBILITY FOR THE PUBLIC DEFENSE SYSTEM; AND

C. SUCH OTHER MATTERS AS THE COUNCIL DEEMS NECESSARY TO CONSIDER OR THE COMMISSION OR THE DIVISION OF THE BUDGET MAY REQUEST THAT IT CONSIDER.

7. THE COUNCIL SHALL MEET AT THE REQUEST OF ITS CHAIR OR THE CHAIR OF THE COMMISSION AS NECESSARY BUT IN NO EVENT LESS THAN FOUR TIMES PER YEAR.

S 499-L. ENFORCEMENT OF STANDARDS; PROHIBITION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE COMMISSION SHALL HAVE NO POWER OR AUTHORITY TO IMPOSE, ENFORCE OR OTHERWISE REQUIRE COMPLIANCE BY ANY LOCALITY OR PUBLIC DEFENSE SERVICE PROVIDER WITH ANY STANDARDS, INCLUDING BUT NOT LIMITED TO STANDARDS RELATING TO ATTORNEY CASELOADS, ETHICS, PROFESSIONAL TRAINING AND CLIENT ELIGIBILITY FOR PUBLIC DEFENSE SERVICES, UNTIL SUCH TIME AS THE COMMISSION, IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS ARTICLE, HAS ASSUMED COMPLETE RESPONSIBILITY FOR THE OVERSIGHT AND ADMINISTRATION OF PUBLIC DEFENSE SERVICES IN THE STATE.

S 499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION. 1. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, EACH LOCALITY IN THE STATE SHALL BE PERMANENTLY RELIEVED OF THE OBLIGATION TO PROVIDE AND ADMINISTER PUBLIC DEFENSE SERVICES, AND THE ADMINISTRATION OF SUCH SERVICES SHALL BECOME SOLELY A STATE OBLIGATION AND CHARGE SUBJECT ONLY TO A FIXED OFFSET CONTRIBUTION TO BE PAID ANNUALLY BY EACH LOCALITY TO THE INDIGENT LEGAL SERVICES FUND TO THE CREDIT OF THE COMMISSION WHICH SHALL ADMINISTER SUCH SERVICES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; 2. THE AGGREGATE OFFSET SHALL BE IN THE AMOUNT OF THREE HUNDRED THIRTY-NINE MILLION DOLLARS AND LOCALITIES SHALL BE OBLIGATED TO PAY, ON AN ANNUAL BASIS, A PERCENTAGE OF THAT AMOUNT BASED ON THE AVERAGE OF THE PERCENTAGES OF TOTAL NET LOCAL EXPENDITURES MADE BY THEM BETWEEN TWO THOUSAND TWO AND TWO THOUSAND EIGHT AS CALCULATED BY THE OFFICE OF THE STATE COMPTROLLER IN THE ADMINISTRATION OF THE INDIGENT LEGAL SERVICES FUND; PROVIDED HOWEVER, THAT (A) IN ACCORDANCE WITH PARAGRAPH A OF SUBDIVISION SIX OF SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTICLE, THE COMMISSION MAY, COMMENCING IN TWO THOUSAND TWENTY-TWO, ADOPT AND IMPLEMENT A REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTION AMOUNT FOR EACH LOCALITY BASED ON THE FORMULA RECOMMENDED TO THE COMMISSION BY THE FINANCING TRANSITION ADVISORY COUNCIL; AND (B) THE AGGREGATE AMOUNT OF ANY SUCH REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTIONS SHALL NOT EXCEED THREE HUNDRED THIRTY-NINE MILLION DOLLARS.

S 2. Section 722 of the county law is amended by adding a new subdivision 6 to read as follows:

6. DISCONTINUANCE OF PLAN AT COUNTY REQUEST. (A) REQUEST TO PUBLIC DEFENSE COMMISSION. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE OR ARTICLE EIGHTEEN-A OF THIS CHAPTER TO THE CONTRARY, THE CHIEF ADMINISTRATIVE OFFICER OF A COUNTY OTHER THAN A COUNTY WHOLLY CONTAINED WITHIN A CITY MAY, WITH THE APPROVAL OF THE GOVERNING BOARD OF SUCH COUNTY AND IN ACCORDANCE WITH APPLICABLE PROCEDURES PROMULGATED BY THE NEW YORK STATE PUBLIC DEFENSE COMMISSION ESTABLISHED PURSUANT TO ARTICLE FIFTEEN-A OF THE JUDICIARY LAW, REQUEST SUCH COMMISSION TO ASSUME FULL RESPONSIBILITY FOR PROVIDING COUNSEL AND RELATED SERVICES PURSUANT TO THIS ARTICLE TO PERSONS CHARGED WITH A CRIME OR OTHERWISE ENTITLED TO ASSIGNMENT OF COUNSEL PURSUANT TO THIS SECTION. (B) GRANTING OF REQUEST; ASSUMPTION OF RESPONSIBILITIES. WHERE, UPON SUCH TERMS AS MAY BE AGREED TO BY SUCH COUNTY AND THE COMMISSION, RESPONSIBILITY FOR PROVIDING COUNSEL AND RELATED SERVICES PURSUANT TO THIS SUBDIVISION IS TRANSFERRED TO AND ASSUMED BY THE COMMISSION, SUCH COUNTY SHALL DISCONTINUE THE PLAN PLACED IN OPERATION PURSUANT TO THIS SECTION, WHEREUPON THE COST FOR PROVIDING COUNSEL AND ALL SERVICES OTHER THAN COUNSEL PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-C OF THIS ARTICLE SHALL BECOME SOLELY A COMMISSION CHARGE; PROVIDED, HOWEVER THAT SUCH COUNTY, DURING THE PERIOD OF SUCH DISCONTINUANCE AND IN ACCORDANCE WITH THE TERMS OF SUCH AGREEMENT, SHALL PAY TO THE INDIGENT LEGAL SERVICES FUND ESTABLISHED PURSUANT TO SECTION NINETY-EIGHT-B OF THE STATE FINANCE LAW AN ANNUAL AGREED UPON DISCONTINUANCE OFFSET CONTRIBUTION TO THE CREDIT OF THE COMMISSION. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO PRECLUDE THE SUBMISSION OF A JOINT REQUEST TO THE COMMISSION BY TWO OR MORE COUNTIES PURSUANT TO THIS SUBDIVISION.

S 3. Articles 18-A and 18-B of the county law are REPEALED.

S 4. Subdivisions 3 and 4 of section 98-b of the state finance law, subdivision 3 as amended by section 1 of part H of chapter 56 of the laws of 2004, paragraph (b) of subdivision 3 as amended by section 1 of part G of chapter 56 of the laws of 2005 and subdivision 4 as added by

section 12 of part J of chapter 62 of the laws of 2003, are amended to read as follows:

3. (a) As provided in this subdivision, moneys received by the indigent legal services fund each calendar year from January first through December thirty-first shall be made available by the state comptroller in the immediately succeeding calendar year to (i) assist [counties and, in the case of a county wholly contained within a city, such city,] THE STATE in providing legal representation [for persons who are financially unable to afford counsel pursuant to article eighteen-B of the county law] PURSUANT TO THE PUBLIC DEFENSE ACT OF 2009; and (ii) assist the state, in funding representation provided by assigned counsel paid in accordance with section thirty-five of the judiciary law. Moneys from the fund shall be distributed at the direction of the state comptroller in accordance with the provisions of this subdivision.

(b) (i) Commencing on March thirty-first, two thousand five, moneys from such fund shall first be made available, in the calendar year next succeeding the calendar year in which collected, to reimburse the state for payments, made in the previous calendar year, for assigned counsel paid in accordance with section thirty-five of the judiciary law, up to an annual sum of twenty-five million dollars.

(ii) Commencing with the payment on April first, two thousand five or as soon thereafter as practicable, and subsequent quarterly payments thereafter, moneys from such fund shall be available to reimburse the state for providing funding for legal representation in periods and at rates of compensation in effect after January first, two thousand four in accordance with section thirty-five of the judiciary law, in an amount equal to such funding provided during the preceding quarter, less the amount of funding provided during that quarter in accordance with such section at rates of compensation in effect immediately prior to January first, two thousand four, up to but not exceeding six million two hundred fifty thousand dollars per quarter.

(c) The balance of moneys received by such fund shall be distributed by the state comptroller, in the calendar year next succeeding the calendar year in which collected, to [counties and, in the case of a county wholly contained within a city, such city, to assist such counties and such city in providing representation pursuant to article eighteen-B of the county law. The amount to be made available each year to such counties and such city shall be calculated by the state comptroller as follows:

(i) The county executive or chief executive officer of each county or, in the case of a county wholly contained within a city, such city shall, in accordance with subdivision two of section seven hundred twenty-two-f of the county law, certify to the state comptroller, by March first of each year, the total expenditure of local funds by each such county or city, during the period January first through December thirty-first of the previous calendar year, for providing legal representation to persons who were financially unable to afford counsel, pursuant to article eighteen-B of the county law.

(ii) The state comptroller shall then total the amount of local funds expended by all such counties and such city to determine the sum of such moneys expended by all such counties and such city for providing such representation in such calendar year.

(iii) The state comptroller shall then calculate the percentage share of the statewide sum of such expenditures for each county and such city for such calendar year.

(iv) The state comptroller shall then determine:

(A) the fund amount available to be distributed pursuant to this paragraph, which shall be the amount received by the indigent legal services fund in the immediately preceding calendar year, minus the amount to be distributed to the state under paragraph (b) of this subdivision provided, however, that with respect to the first payment made to counties and such city on March thirty-first, two thousand five, such payment shall be made from the amounts received by the indigent legal services fund in the immediately preceding two calendar years, minus the amount to be distributed to the state under paragraph (b) of this subdivision; and

(B) the annual payment amount to be paid to each county and such city pursuant to this subdivision, which shall be the product of the percentage share of statewide local funds expended by each such county and city, as determined pursuant to subparagraph (iii) of this paragraph, multiplied by the fund amount available for distribution, as determined pursuant to clause (A) of this subparagraph.

(d) All payments from this account shall be made upon vouchers approved and certified and upon audit and warrant of the state comptroller. The state comptroller shall, as soon as practicable, make such payments to the state and each county and each city in a lump sum payment] THE PUBLIC DEFENSE COMMISSION CREATED BY THE PUBLIC DEFENSE ACT OF 2009.

[4. Maintenance of effort. (a) As used in this section, "local funds" shall mean all funds appropriated or allocated by a county or, in the case of a county wholly contained within a city, such city, for services and expenses in accordance with article eighteen-B of the county law, other than funds received from: (i) the federal government or the state; or (ii) a private source, where such city or county does not have authority or control over the payment of such funds by such private source.

(b) State funds received by a county or city pursuant to subdivision three of this section shall be used to supplement and not supplant any local funds which such county or city would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-B of the county law. All such state funds received by a county or city shall be used to improve the quality of services provided pursuant to article eighteen-B of the county law.

(c) Notwithstanding the provisions of any other law, as a precondition for receiving state assistance pursuant to subdivision three of this section, a county or city shall be required pursuant to this paragraph to demonstrate compliance with the maintenance of effort provisions of paragraph (b) of this subdivision. Such compliance shall be shown as a part of the annual report submitted by the county or city in accordance with subdivision two of section seven hundred twenty-two-f of the county law. Such maintenance of effort shall be shown by demonstrating with specificity:

(i) that the total amount of local funds expended for services and expenses pursuant to article eighteen-B of the county law during the applicable calendar year reporting period did not decrease from the amount of such local funds expended during the previous calendar year provided, however, that with respect to the report filed in two thousand six regarding calendar year two thousand five, such maintenance of effort shall be shown by demonstrating with specificity that the total amount of local funds expended for services and expenses pursuant to article eighteen-B of the county law during the two thousand five calen-

dar year did not decrease from the amount of such local funds expended during calendar year two thousand two; or

(ii) where the amount of local funds expended for such services decreased over such period, that all state funds received during the most recent state fiscal year pursuant to subdivision three of this section were used to assure an improvement in the quality of services provided in accordance with article eighteen-B of the county law and have not been used to supplant local funds. For purposes of this subparagraph, whether there has been an improvement in the quality of such services shall be determined by considering the expertise, training and resources made available to attorneys, experts and investigators providing such services; the total caseload handled by such attorneys, experts and investigators as such relates to the time expended in each case and the quality of services provided; the system by which attorneys were matched to cases with a degree of complexity suitable to each attorney's training and experience; the provision of timely and confidential access to such attorneys and expert and investigative services; and any other similar factors related to the delivery of quality public defense services.]

S 5. This act shall take effect immediately; provided, however, that section 499-m of the judiciary law, as added by section one of this act, and the provisions of section three of this act shall take effect April 1, 2012; provided further the provisions of section four of this act shall take effect January 1, 2012; and, provided further the amendments to section 722 of the county law made by section two of this act shall take effect one year after such effective date.