

6002

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sens. SCHNEIDERMAN, HASSELL-THOMPSON, SAMPSON, ADAMS, BRESLIN, FOLEY, HUNTLEY, MONSERRATE, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SERRANO, STEWART-COUSINS, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

3 ARTICLE 15-A

4 PUBLIC DEFENSE ACT OF 2009

5 SECTION 499-A. SHORT TITLE.

6 499-B. PURPOSES.

7 499-C. DEFINITIONS.

8 499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED.

9 499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICA-
10 TIONS.

11 499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION
12 OF CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPEN-
13 SATION.

14 499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND
15 RESPONSIBILITIES.

16 499-H. STATE DEFENDER.

17 499-I. ASSISTANCE BY STATE OFFICES, DEPARTMENTS, BOARDS, DIVI-
18 SIONS AND COMMISSIONS AND FROM LOCALITIES AND PUBLIC
19 DEFENSE PROVIDERS.

20 499-J. INDEPENDENCE; FISCAL DISCIPLINE.

21 499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION.

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

LBD11952-03-9

1 499-L. ENFORCEMENT OF STANDARDS; PROHIBITION.

2 499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE
3 SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION.

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

6 S 499-B. PURPOSES. THE PURPOSES OF THIS ARTICLE ARE TO: 1. IMPROVE THE
7 QUALITY OF PUBLIC DEFENSE SERVICES STATEWIDE BY IMPLEMENTING STATE OVER-
8 SIGHT, FUNDING AND CONTROL OF PUBLIC DEFENSE SERVICES, WHILE PROVIDING
9 FOR THE PLANNING AND IMPLEMENTATION OF THE STATE'S ASSUMPTION OF THESE
10 RESPONSIBILITIES IN A MANNER THAT IS RESPONSIVE TO REGIONAL AND COMMUNI-
11 TY NEEDS;

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

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

18 4. GUARANTEE THAT STATE AND LOCAL FUNDS FOR PUBLIC DEFENSE SERVICES
19 ARE MANAGED IN AN EFFICIENT AND COST EFFECTIVE MANNER WITHOUT SACRIFIC-
20 ING QUALITY OF REPRESENTATION;

21 5. ESTABLISH A PUBLIC DEFENSE COMMISSION AS A PUBLIC BENEFIT CORPO-
22 RATION RESPONSIBLE FOR OVERSEEING PUBLIC DEFENSE SERVICES AND PLANNING
23 AND IMPLEMENTING STATE ADMINISTRATION OF PUBLIC DEFENSE SERVICES
24 THROUGHOUT THE STATE; ENSURING THAT SUCH SERVICES ARE DELIVERED BY QUAL-
25 IFIED AND COMPETENT ATTORNEYS IN A MANNER THAT IS FAIR, EFFECTIVE AND
26 UNIFORM; AND DEVELOPING POLICIES, PROCEDURES AND STANDARDS FOR THE
27 DELIVERY OF SUCH SERVICES; AND

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

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

33 2. "CLIENT COMMUNITY" MEANS CLIENTS, THEIR FAMILIES, LOCAL NEIGHBOR-
34 HOODS IN WHICH A SIGNIFICANT NUMBER OF CLIENTS LIVE AND ORGANIZATIONS
35 DEDICATED TO PROVIDING SUPPORT OR ADVOCACY TO CLIENTS, THEIR FAMILIES
36 AND LOCAL NEIGHBORHOODS.

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

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

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

45 6. "PUBLIC DEFENSE SERVICES" MEANS PUBLICLY-FINANCED LEGAL REPRESENTATION,
46 INCLUDING THE SERVICES OF ATTORNEYS AND/OR ALL INVESTIGATIVE AND
47 NECESSARY ANCILLARY SERVICES PROVIDED TO PERSONS UNABLE TO AFFORD THEM
48 AND SUSPECTED OF, ACCUSED OF, CHARGED WITH, OR CONVICTED OF, COMMITTING
49 A FELONY, MISDEMEANOR, OR THE BREACH OF ANY LAW OF THIS STATE OR OF ANY
50 LAW, LOCAL LAW OR ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE FOR
51 WHICH A SENTENCE TO A TERM OF IMPRISONMENT IS AUTHORIZED UPON
52 CONVICTION THEREOF, INCLUDING REPRESENTATION AT THE PRETRIAL, TRIAL,
53 APPELLATE AND POST-CONVICTION STAGES IN CRIMINAL CASES, OR ENTITLED TO
54 REPRESENTATION UNDER SECTION TWO HUNDRED SIXTY-TWO OF THE FAMILY COURT
55 ACT OR OTHERWISE ENTITLED TO PUBLIC REPRESENTATION IN FAMILY COURT,
56 SUPREME COURT, SURROGATE'S COURT, PAROLE PROCEEDINGS AND RELATED APPEALS

1 UNDER THE EXECUTIVE LAW, IN CLASSIFICATION PROCEEDINGS UNDER ARTICLE
2 SIX-C OF THE CORRECTION LAW AND RELATED APPEALS AND IN ALL OTHER CASES
3 WHERE COUNSEL IS OR MAY BE PROVIDED FOR BY LAW.

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

7 S 499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED. 1. THERE IS HEREBY
8 ESTABLISHED THE NEW YORK STATE PUBLIC DEFENSE COMMISSION, A BODY CORPO-
9 RATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

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

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

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

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

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

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

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

45 S 499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICATIONS.
46 1. THE COMMISSION SHALL BE COMPOSED OF THIRTEEN MEMBERS WHO SHALL BE
47 SELECTED WITH REGARD FOR THE GEOGRAPHIC, RACIAL, ETHNIC AND GENDER MAKE-
48 UP OF THE STATE AND THE CULTURAL DIVERSITY OF THE STATE'S PUBLIC DEFENSE
49 CLIENTS. A PERSON APPOINTED TO THE COMMISSION MUST HAVE A DEMONSTRABLE
50 COMMITMENT TO QUALITY REPRESENTATION OF LOWER INCOME PEOPLE, TO IMPROV-
51 ING THE PUBLIC DEFENSE SYSTEM AND TO THE PRINCIPLE OF INDEPENDENCE OF
52 THE DEFENSE FUNCTION. WHILE SERVING ON THE COMMISSION, NO MEMBER OF THE
53 COMMISSION SHALL BE A JUDGE, PROSECUTOR, PUBLIC DEFENSE PROVIDER, LAW
54 ENFORCEMENT OFFICER, COUNTY ATTORNEY, ATTORNEY GENERAL, UNITED STATES
55 ATTORNEY, OR EMPLOYEE THEREOF, OR A FULL TIME EMPLOYEE OF THE STATE OR

1 ANY POLITICAL SUBDIVISION, OR OF ANY BOARD, COMMISSION, AGENCY OR
2 AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

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

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

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

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

12 (III) ONE FROM NOT LESS THAN THREE NOMINEES DRAWN FROM A LIST OF INDI-
13 VIDUALS RECOMMENDED TO THE CHIEF JUDGE BY THE DEANS OF THE STATE'S LAW
14 SCHOOLS;

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

18 C. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
19 TY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES
20 SUBMITTED BY THE SPEAKER OF THE STATE ASSEMBLY;

21 D. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
22 TY OF PUBLIC DEFENSE REPRESENTATION WHO HAS SUBSTANTIAL EXPERIENCE IN
23 THE DELIVERY OF PUBLIC DEFENSE SERVICES FROM NOT LESS THAN THREE NOMI-
24 NEES SUBMITTED BY THE MINORITY LEADER OF THE STATE SENATE;

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

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

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

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

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

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

46 K. ONE PERSON WITH EXPERIENCE AS A CONSUMER OF PUBLIC DEFENSE SERVICES
47 WHO, HAVING BEEN EXONERATED OR HAVING PAID HIS OR HER DEBT TO SOCIETY BY
48 SERVICE OF A SENTENCE, HAS DEMONSTRATED A COMMITMENT TO THE IMPROVEMENT
49 OF LEGAL SERVICES FOR THOSE UNABLE TO AFFORD COUNSEL FROM NOT LESS THAN
50 THREE NOMINEES SUBMITTED BY THE FORTUNE SOCIETY.

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

53 S 499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION OF
54 CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPENSATION. 1. MEMBERS OF
55 THE COMMISSION SHALL SERVE TERMS OF FOUR YEARS; PROVIDED, HOWEVER, THAT
56 THE MEMBERS INITIALLY APPOINTED SHALL SERVE THE FOLLOWING TERMS: A. THE

1 THREE MEMBERS APPOINTED PURSUANT TO PARAGRAPHS I, J, AND K OF SUBDIVI-
2 SION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, ONE
3 YEAR; B. THE THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPHS (II) AND
4 (III) OF PARAGRAPH A AND PARAGRAPH F OF SUBDIVISION TWO OF SECTION FOUR
5 HUNDRED NINETY-NINE-E OF THIS ARTICLE, TWO YEARS; C. THE THREE MEMBERS
6 APPOINTED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH A AND PARAGRAPHS G
7 AND H OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS
8 ARTICLE, THREE YEARS; AND D. THE FOUR MEMBERS APPOINTED PURSUANT TO
9 PARAGRAPHS B, C, D AND E OF SUBDIVISION TWO OF SECTION FOUR HUNDRED
10 NINETY-NINE-E OF THIS ARTICLE, FOUR YEARS.

11 2. MEMBERS OF THE COMMISSION SHALL SELECT BY MAJORITY VOTE A CHAIR-
12 PERSON FROM AMONG THEIR RANKS FOR A TERM OF TWO YEARS.

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

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

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

21 S 499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND RESPON-
22 SIBILITIES. THE COMMISSION SHALL HAVE THE POWER, DUTY AND RESPONSIBIL-
23 ITY:

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

32 2. TO ENGAGE IN AN EVALUATION OF EXISTING PUBLIC DEFENSE SYSTEMS AND
33 SERVICE PROVIDERS IN THE STATE BASED ON THE "STANDARDS FOR PROVIDING
34 MANDATED REPRESENTATION" AS ADOPTED BY THE NEW YORK STATE BAR ASSOCI-
35 ATION'S HOUSE OF DELEGATES AND THE "STANDARDS FOR PROVIDING CONSTITU-
36 TIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK
37 STATE" AS ADOPTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION'S BOARD OF
38 DIRECTORS, AND SUCH OTHER STATE AND NATIONAL STANDARDS AS THE COMMISSION
39 DEEMS APPROPRIATE, AND DEVELOP AND OVERSEE A SELF-EVALUATION PROCESS FOR
40 EXISTING PUBLIC DEFENSE PROVIDERS;

41 3. TO CALCULATE THE COST OF PUBLIC DEFENSE SERVICES, INCLUDING BUT NOT
42 LIMITED TO THE TOTAL ACTUAL COST OF THE CURRENT SYSTEM FOR PROVIDING
43 SUCH SERVICES; THE PROJECTED COST WHEN THE SYSTEM IS SUBJECTED TO MEAN-
44 INGFUL ECONOMIES OF SCALE, REDUCTION OF WASTE, AND ELIMINATION OF DUPLI-
45 CATION; AND THE PROJECTED ADDITIONAL COSTS REQUIRED TO ENSURE COMPLIANCE
46 WITH NATIONAL, ETHICAL AND STATE PROFESSIONAL STANDARDS AND BEST PRACTI-
47 TICES;

48 4. IN CONSULTATION WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO
49 SUBDIVISION EIGHT OF THIS SECTION AND THE FINANCING TRANSITION ADVISORY
50 COUNCIL ESTABLISHED BY SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTI-
51 CLE, TO PROMULGATE A STRATEGIC PLAN FOR THE ADMINISTRATION AND FUNDING
52 OF TRIAL, APPELLATE, FAMILY AND CONFLICT PUBLIC DEFENSE SERVICES
53 THROUGHOUT THE STATE. SUCH PLAN SHALL BE CONSISTENT WITH THE PROVISIONS
54 AND FURTHER THE PURPOSES OF THIS ARTICLE AND SHALL, AT A MINIMUM,
55 PROVIDE FOR: A. THE DESIGNATION OF GEOGRAPHIC REGIONS TO ALLOW FOR THE
56 MORE EFFICIENT AND EFFECTIVE PROVISION OF PUBLIC DEFENSE SERVICES,

1 PROVIDED, HOWEVER, THAT REGIONS ENCOMPASSING MULTIPLE COUNTIES SHALL
2 INCLUDE AT LEAST ONE STAFFED OFFICE IN EACH COUNTY SO AS TO PROVIDE
3 ADEQUATE ACCESS BY CLIENTS TO PUBLIC DEFENSE SERVICES; B. THE AUTHORITY
4 OF THE COMMISSION TO CONTRACT WITH NOT-FOR-PROFIT PUBLIC DEFENSE SERVICE
5 PROVIDERS TO PROVIDE PUBLIC DEFENSE SERVICES TO CLIENTS; AND C. THE
6 AUTHORITY OF THE COMMISSION TO DIRECTLY EMPLOY CRIMINAL DEFENSE ATTOR-
7 NEYS, INVESTIGATORS AND OTHER PROFESSIONAL AND SUPPORT STAFF TO PROVIDE
8 PUBLIC DEFENSE SERVICES TO CLIENTS.

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

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

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

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

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

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

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

52 S 499-H. STATE DEFENDER. 1. THE STATE DEFENDER APPOINTED PURSUANT TO
53 SUBDIVISION SEVEN OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS ARTICLE
54 SHALL BE AN ATTORNEY, SHALL SERVE AS THE CHIEF EXECUTIVE OFFICER OF THE
55 COMMISSION, SHALL HAVE THE AUTHORITY, IN CONSULTATION WITH THE COMMIS-
56 SION, TO HIRE ATTORNEYS AND OTHER STAFF AND TO TAKE ALL OTHER SUCH

1 ACTIONS AS THE STATE DEFENDER AND THE COMMISSION DEEM NECESSARY TO CARRY
2 OUT THE PURPOSES OF THIS ARTICLE. IN ADDITION, THE STATE DEFENDER SHALL
3 HAVE COMPLETE AUTHORITY, TO THE EXCLUSION OF ALL OTHERS, TO SUPERVISE
4 THE PERSONNEL OF THE COMMISSION EXCEPT FOR THE CONFLICT DEFENDER, IF
5 ANY, AND RELATED CONFLICT STAFF WITH REGARD TO CASE-RELATED MATTERS.

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

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

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

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

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

33 S 499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION. 1.
34 THERE SHALL BE ESTABLISHED FOR A PERIOD OF THREE YEARS A FINANCING
35 TRANSITION ADVISORY COUNCIL CONSISTING OF FIFTEEN MEMBERS TO BE APPOINTED
36 BY THE GOVERNOR TO SERVE AS AN ADVISORY BODY TO THE COMMISSION IN
37 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. EIGHT OF THE MEMBERS
38 SHALL BE APPOINTED ON THE BASIS OF THEIR PROFESSIONAL KNOWLEDGE OF THE
39 WORKINGS OF COUNTY OR CITY GOVERNMENT, THEIR EXPERIENCE AS A COUNTY
40 OFFICIAL IN THE PROVISION OF COUNTY SERVICES, THEIR EXPERIENCE AS AN
41 OFFICIAL OR STAFF MEMBER OF THE NEW YORK STATE ASSOCIATION OF COUNTIES
42 OR OTHERWISE ON THE BASIS OF THEIR ADVOCACY FOR THE RIGHTS AND INTERESTS
43 OF LOCALITIES. AT LEAST FIVE OF THE MEMBERS SHALL BE APPOINTED ON THE
44 BASIS OF THEIR EXPERIENCE IN THE ADMINISTRATION OF STATE AID TO
45 LOCALITIES, THEIR PROFESSIONAL KNOWLEDGE OF THE METHODS AND PRACTICES
46 OF THE NEW YORK STATE DIVISION OF THE BUDGET, THEIR EXPERIENCE IN
47 DESIGNING STATE AID PROGRAMS, THEIR EXPERTISE IN DESIGNING AND
48 CALCULATING REVENUE STREAMS, OR SIMILAR STATE BUDGET EXPERTISE. IN
49 MAKING SUCH APPOINTMENTS, THE GOVERNOR SHALL ENDEAVOR TO INSURE
50 THAT THE OVERALL MEMBERSHIP OF THE COUNCIL ADEQUATELY REFLECTS THE
51 RURAL, SUBURBAN AND URBAN AREAS OF THE STATE.

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

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

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

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

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

18 A. DEVISING A FAIR AND EQUITABLE FORMULA FOR FIXING AND PERMANENTLY
19 CAPPING OFFSET CONTRIBUTIONS BY LOCALITIES TO THE TOTAL COST OF PROVID-
20 ING PUBLIC DEFENSE SERVICES, WHICH FORMULA SHALL, IF ADOPTED BY THE
21 COMMISSION, BECOME EFFECTIVE NO EARLIER THAN TWO THOUSAND TWENTY-TWO.
22 SUCH FORMULA SHOULD, AT A MINIMUM, ADDRESS AND CORRECT CURRENT INEQUI-
23 TIES IN THE COMPARATIVE NET LOCAL EXPENDITURES MADE BY COUNTIES HISTOR-
24 ICALLY AND CURRENTLY IN PROVIDING SERVICES PURSUANT TO ARTICLE EIGH-
25 TEEN-B OF THE COUNTY LAW, AND INCLUDE RECOMMENDATIONS FOR METHODS TO
26 ASSURE COUNTIES OF THE BONA FIDES OF THE STATE IN ITS LONG-TERM CAPPING
27 OF THE FISCAL LIABILITY OF LOCALITIES;

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

31 C. SUCH OTHER MATTERS AS THE COUNCIL DEEMS NECESSARY TO CONSIDER OR
32 THE COMMISSION OR THE DIVISION OF THE BUDGET MAY REQUEST THAT IT CONSID-
33 ER.

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

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

47 S 499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE
48 SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION. 1. NOTWITHSTANDING ANY
49 PROVISION OF LAW TO THE CONTRARY, EACH LOCALITY IN THE STATE SHALL BE
50 PERMANENTLY RELIEVED OF THE OBLIGATION TO PROVIDE AND ADMINISTER PUBLIC
51 DEFENSE SERVICES, AND THE ADMINISTRATION OF SUCH SERVICES SHALL BECOME
52 SOLELY A STATE OBLIGATION AND CHARGE SUBJECT ONLY TO A FIXED OFFSET
53 CONTRIBUTION TO BE PAID ANNUALLY BY EACH LOCALITY TO THE INDIGENT LEGAL
54 SERVICES FUND TO THE CREDIT OF THE COMMISSION WHICH SHALL ADMINISTER
55 SUCH SERVICES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; 2. THE
56 AGGREGATE OFFSET SHALL BE IN THE AMOUNT OF THREE HUNDRED THIRTY-NINE

1 MILLION DOLLARS AND LOCALITIES SHALL BE OBLIGATED TO PAY, ON AN ANNUAL
2 BASIS, A PERCENTAGE OF THAT AMOUNT BASED ON THE AVERAGE OF THE PERCENT-
3 AGES OF TOTAL NET LOCAL EXPENDITURES MADE BY THEM BETWEEN TWO THOUSAND
4 TWO AND TWO THOUSAND EIGHT AS CALCULATED BY THE OFFICE OF THE STATE
5 COMPTROLLER IN THE ADMINISTRATION OF THE INDIGENT LEGAL SERVICES FUND;
6 PROVIDED HOWEVER, THAT (A) IN ACCORDANCE WITH PARAGRAPH A OF SUBDIVISION
7 SIX OF SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTICLE, THE COMMIS-
8 SION MAY, COMMENCING IN TWO THOUSAND TWENTY-TWO, ADOPT AND IMPLEMENT A
9 REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTION AMOUNT FOR EACH LOCALITY
10 BASED ON THE FORMULA RECOMMENDED TO THE COMMISSION BY THE FINANCING
11 TRANSITION ADVISORY COUNCIL; AND (B) THE AGGREGATE AMOUNT OF ANY SUCH
12 REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTIONS SHALL NOT EXCEED THREE
13 HUNDRED THIRTY-NINE MILLION DOLLARS.

14 S 2. Section 722 of the county law is amended by adding a new subdivi-
15 sion 6 to read as follows:

16 6. DISCONTINUANCE OF PLAN AT COUNTY REQUEST. (A) REQUEST TO PUBLIC
17 DEFENSE COMMISSION. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE OR
18 ARTICLE EIGHTEEN-A OF THIS CHAPTER TO THE CONTRARY, THE CHIEF ADMINIS-
19 TRATIVE OFFICER OF A COUNTY OTHER THAN A COUNTY WHOLLY CONTAINED WITHIN
20 A CITY MAY, WITH THE APPROVAL OF THE GOVERNING BOARD OF SUCH COUNTY AND
21 IN ACCORDANCE WITH APPLICABLE PROCEDURES PROMULGATED BY THE NEW YORK
22 STATE PUBLIC DEFENSE COMMISSION ESTABLISHED PURSUANT TO ARTICLE
23 FIFTEEN-A OF THE JUDICIARY LAW, REQUEST SUCH COMMISSION TO ASSUME FULL
24 RESPONSIBILITY FOR PROVIDING COUNSEL AND RELATED SERVICES PURSUANT TO
25 THIS ARTICLE TO PERSONS CHARGED WITH A CRIME OR OTHERWISE ENTITLED TO
26 ASSIGNMENT OF COUNSEL PURSUANT TO THIS SECTION. (B) GRANTING OF REQUEST;
27 ASSUMPTION OF RESPONSIBILITIES. WHERE, UPON SUCH TERMS AS MAY BE AGREED
28 TO BY SUCH COUNTY AND THE COMMISSION, RESPONSIBILITY FOR PROVIDING COUN-
29 SEL AND RELATED SERVICES PURSUANT TO THIS SUBDIVISION IS TRANSFERRED TO
30 AND ASSUMED BY THE COMMISSION, SUCH COUNTY SHALL DISCONTINUE THE PLAN
31 PLACED IN OPERATION PURSUANT TO THIS SECTION, WHEREUPON THE COST FOR
32 PROVIDING COUNSEL AND ALL SERVICES OTHER THAN COUNSEL PURSUANT TO
33 SECTION SEVEN HUNDRED TWENTY-TWO-C OF THIS ARTICLE SHALL BECOME SOLELY A
34 COMMISSION CHARGE; PROVIDED, HOWEVER THAT SUCH COUNTY, DURING THE PERIOD
35 OF SUCH DISCONTINUANCE AND IN ACCORDANCE WITH THE TERMS OF SUCH AGREE-
36 MENT, SHALL PAY TO THE INDIGENT LEGAL SERVICES FUND ESTABLISHED PURSUANT
37 TO SECTION NINETY-EIGHT-B OF THE STATE FINANCE LAW AN ANNUAL AGREED UPON
38 DISCONTINUANCE OFFSET CONTRIBUTION TO THE CREDIT OF THE COMMISSION.
39 NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO PRECLUDE THE
40 SUBMISSION OF A JOINT REQUEST TO THE COMMISSION BY TWO OR MORE COUNTIES
41 PURSUANT TO THIS SUBDIVISION.

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

43 S 4. Subdivisions 3 and 4 of section 98-b of the state finance law,
44 subdivision 3 as amended by section 1 of part H of chapter 56 of the
45 laws of 2004, paragraph (b) of subdivision 3 as amended by section 1 of
46 part G of chapter 56 of the laws of 2005 and subdivision 4 as added by
47 section 12 of part J of chapter 62 of the laws of 2003, are amended to
48 read as follows:

49 3. (a) As provided in this subdivision, moneys received by the indi-
50 gent legal services fund each calendar year from January first through
51 December thirty-first shall be made available by the state comptroller
52 in the immediately succeeding calendar year to (i) assist [counties and,
53 in the case of a county wholly contained within a city, such city,] THE
54 STATE in providing legal representation [for persons who are financially
55 unable to afford counsel pursuant to article eighteen-B of the county
56 law] PURSUANT TO THE PUBLIC DEFENSE ACT OF 2009; and (ii) assist the

1 state, in funding representation provided by assigned counsel paid in
2 accordance with section thirty-five of the judiciary law. Moneys from
3 the fund shall be distributed at the direction of the state comptroller
4 in accordance with the provisions of this subdivision.

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

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

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

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

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

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

46 (iv) The state comptroller shall then determine:

47 (A) the fund amount available to be distributed pursuant to this para-
48 graph, which shall be the amount received by the indigent legal services
49 fund in the immediately preceding calendar year, minus the amount to be
50 distributed to the state under paragraph (b) of this subdivision
51 provided, however, that with respect to the first payment made to coun-
52 ties and such city on March thirty-first, two thousand five, such
53 payment shall be made from the amounts received by the indigent legal
54 services fund in the immediately preceding two calendar years, minus the
55 amount to be distributed to the state under paragraph (b) of this subdi-
56 vision; and

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

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

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

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

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

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

49 (ii) where the amount of local funds expended for such services
50 decreased over such period, that all state funds received during the
51 most recent state fiscal year pursuant to subdivision three of this
52 section were used to assure an improvement in the quality of services
53 provided in accordance with article eighteen-B of the county law and
54 have not been used to supplant local funds. For purposes of this subpar-
55 agraph, whether there has been an improvement in the quality of such
56 services shall be determined by considering the expertise, training and

1 resources made available to attorneys, experts and investigators provid-
2 ing such services; the total caseload handled by such attorneys, experts
3 and investigators as such relates to the time expended in each case and
4 the quality of services provided; the system by which attorneys were
5 matched to cases with a degree of complexity suitable to each attorney's
6 training and experience; the provision of timely and confidential access
7 to such attorneys and expert and investigative services; and any other
8 similar factors related to the delivery of quality public defense
9 services.]

10 S 5. This act shall take effect immediately; provided, however, that
11 section 499-m of the judiciary law, as added by section one of this act,
12 and the provisions of section three of this act shall take effect April
13 1, 2012; provided further the provisions of section four of this act
14 shall take effect January 1, 2012; and, provided further the amendments
15 to section 722 of the county law made by section two of this act shall
16 take effect one year after such effective date.