

2749

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

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Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Judiciary

AN ACT establishing the New York state public defense commission, providing for the members, powers and duties thereof, and providing fiscal relief to localities; and to amend the county law, in relation to public 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. The legislature finds  
2 and declares that in certain proceedings the state is required to  
3 provide high quality legal assistance to persons otherwise financially  
4 unable to obtain counsel and/or afford the necessary expenses of repre-  
5 sentation. Providing public defense services to those who face an  
6 economic barrier to obtaining legal counsel serves the ends of justice  
7 in accordance with rights and privileges guaranteed by the constitution  
8 of the state of New York and the constitution of the United States of  
9 America. The availability of high quality public defense services  
10 affirms the faith of our citizens in our government of laws.

11 The legislature further finds that the present system of requiring  
12 localities to provide public defense services with little state finan-  
13 cial assistance and no state oversight does not and cannot meet the  
14 foregoing objectives. The existing statutory limit on fees for counsel  
15 assigned to provide public defense services has resulted in a shortage  
16 of qualified lawyers to provide defense services, thereby denying or  
17 delaying the representation to which public defense clients are enti-  
18 tled. The present system has caused court congestion and delay, and  
19 eroded public trust and confidence in the legal system.

20 The legislature further finds that localities are struggling to carry  
21 the increasing burden of fulfilling the state mandate to provide defense  
22 services, and cannot bear alone the cost of raising assigned counsel

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

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1 fees to reasonable levels. Local property owners should be given some  
2 relief from the obligation of providing public defense services.

3 The legislature further finds that no mechanism currently exists for  
4 state oversight of the provision of public defense services, despite its  
5 character as a state mandate and the appropriation of some state funds  
6 to support public defense services. Sound fiscal and governmental policy  
7 requires oversight of defense services to ensure that the state mandate  
8 is being met, and to determine the most effective and efficient future  
9 allocation of state funds. Certain defense services can most efficiently  
10 and effectively be provided by an independent commission. Some locali-  
11 ties, especially those with smaller populations, could benefit by a  
12 mechanism for delivering defense services directly by the state.

13 The legislature further finds that public defense services must be  
14 provided in a manner that ensures the independence of public defense  
15 providers.

16 Therefore, to address these needs, the legislature establishes in this  
17 act the New York state public defense commission to oversee public  
18 defense services in this state, reimburse localities for public defense  
19 expenditures, and provide defense services in extraordinary circum-  
20 stances.

21 S 2. Short title. This act shall be known and may be cited as the "New  
22 York state public defense commission act".

23 S 3. Definitions. As used in this act, the following terms are defined  
24 as follows:

25 1. "Client" means a person who is currently receiving or received in  
26 the past public defense services.

27 2. "Client community" means clients, their families, geographic neigh-  
28 borhoods in which a significant number of clients live, and organiza-  
29 tions dedicated to providing support and/or advocacy to clients and  
30 their families and neighborhoods.

31 3. "Commission" means the New York state public defense commission  
32 established pursuant to section four of this act.

33 4. "Committee" shall mean the nominating committee established pursu-  
34 ant to section five of this act.

35 5. "Director" shall mean the director of public defense services  
36 appointed pursuant to section six of this act.

37 6. "Eligible person" means any person financially unable to obtain  
38 counsel and/or afford the necessary expenses of representation, when  
39 such person is suspected or accused of, charged with, or convicted of  
40 committing an offense, or is a party in family court, surrogate's court  
41 or other proceedings, and is entitled to counsel by law.

42 7. "Locality" means a county, except that within any county in the  
43 city of New York such term shall mean the city of New York.

44 8. "Public defense services" or "defense services" means publicly  
45 financed legal representation, including the services of an attorney and  
46 all necessary ancillary services, provided to persons financially unable  
47 to obtain counsel and/or afford the necessary expenses of represen-  
48 tation, when such persons are suspected or accused of, charged with, or  
49 convicted of committing an offense, or are parties in family court,  
50 surrogate's court or other proceedings, and are entitled to counsel by  
51 law.

52 S 4. New York state public defense commission. 1. There is hereby  
53 established the New York state public defense commission, a body corpo-  
54 rate and public constituting a public benefit corporation. The commis-  
55 sion shall be composed of thirteen members.

56 2. a. The members of the commission shall be appointed as follows:

1 (i) seven members shall be appointed by the governor in accordance  
2 with the provisions of paragraph c of this subdivision;  
3 (ii) one member shall be appointed by the temporary president of the  
4 senate;  
5 (iii) one member shall be appointed by the speaker of the assembly;  
6 (iv) one member shall be appointed by the minority leader of the  
7 senate;  
8 (v) one member shall be appointed by the minority leader of the assem-  
9 bly;  
10 (vi) one member shall be appointed by the chief judge of the court of  
11 appeals; and  
12 (vii) one member shall be appointed by the administrative board of the  
13 courts.

14 b. No member of the commission shall be a judge, prosecutor, law  
15 enforcement officer or employee thereof, or public official, unless such  
16 official is engaged exclusively in providing and/or administering public  
17 defense services.

18 c. (i) Five of the seven members appointed by the governor shall be  
19 appointed as follows:

20 (A) one with the qualifications enumerated in paragraph a of subdivi-  
21 sion three of section five of this act, shall be appointed upon the  
22 recommendation of the New York State Association of Criminal Defense  
23 Lawyers;

24 (B) one with the qualifications enumerated in paragraph b of subdivi-  
25 sion three of section five of this act, shall be appointed upon the  
26 recommendation of the Vera Institute of Justice;

27 (C) one with the qualifications enumerated in paragraph c of subdivi-  
28 sion three of section five of this act, shall be appointed upon the  
29 recommendation of the Community Action Association of New York;

30 (D) one with the qualifications enumerated in paragraph d of subdivi-  
31 sion three of section five of this act, shall be appointed upon the  
32 recommendation of the New York State Defenders Association; and

33 (E) one with the qualifications enumerated in paragraph e of subdivi-  
34 sion three of section five of this act, shall be appointed upon the  
35 recommendation of the New York State Bar Association.

36 (ii) In the case of members to be appointed pursuant to subparagraph  
37 (i) of this paragraph, the governor may request the provision of addi-  
38 tional recommended qualified candidates from the appropriate recommend-  
39 ing entity. The two members of the commission appointed solely by the  
40 governor and all other members appointed by the other appointing author-  
41 ities shall be selected from the pool of candidates provided by the  
42 committee pursuant to section five of this act. A majority of the  
43 members of the commission shall be attorneys admitted to practice in  
44 this state.

45 d. The members of the commission shall serve terms of four years;  
46 provided, however, that the members initially appointed shall serve the  
47 following terms:

48 (i) two members appointed by the governor, two years;

49 (ii) two members appointed by the governor, and the members appointed  
50 by the chief judge of the court of appeals and the administrative board  
51 of the courts, three years; and

52 (iii) all remaining members, four years.

53 All members may be reappointed to additional terms and shall serve  
54 until their successors are appointed. Vacancies on the commission shall  
55 be filled for the remainder of the term in the manner provided for by  
56 the original appointment.

1 3. The members of the commission shall receive no compensation for  
2 their services, but shall be allowed their actual and necessary expenses  
3 incurred in the performance of their duties.

4 4. The powers of the corporation shall be vested in and shall be exer-  
5 cised by the commission at any meeting duly called and held where a  
6 quorum of eight members is present. No action shall be taken by the  
7 commission except pursuant to the favorable vote of at least seven  
8 members present at the meeting at which such action is taken.

9 5. Any action required or permitted to be taken by the commission or  
10 any committee thereof may be taken without a meeting if all members of  
11 the commission or the committee consent in writing to the adoption of a  
12 resolution authorizing such action. The resolution and the written  
13 consents thereto by the members of the commission or committee shall be  
14 filed with the minutes of the proceedings of the commission or commit-  
15 tee.

16 6. The members of the commission or any committee thereof may partic-  
17 ipate in a meeting of such commission or committee by means of a confer-  
18 ence telephone or similar communications equipment allowing all persons  
19 participating in the meeting to hear each other at the same time;  
20 participation by such means shall constitute presence in person at such  
21 meeting.

22 7. The commission shall establish an advisory committee representative  
23 of public defenders, attorneys-in-charge of private legal aid bureaus or  
24 societies and not-for-profit corporations, voluntary associations,  
25 organizations providing public defense services, and assigned counsel  
26 administrators in all areas of the state.

27 S 5. Nominating committee. 1. There is hereby established the public  
28 defense commission nominating committee. Such committee shall be  
29 composed of eleven members as follows:

30 a. the commissioner of criminal justice services, or his or her desig-  
31 nee;

32 b. a representative of the New York State Association of Counties;

33 c. a representative of the New York State Bar Association;

34 d. a representative of the Vera Institute of Justice;

35 e. a representative of the Community Action Association of New York;

36 f. a representative of the Fund for Modern Courts;

37 g. a representative of the Puerto Rican Legal Defense and Education  
38 Fund;

39 h. a representative of the National Association for the Advancement of  
40 Colored People Legal Defense and Educational Fund;

41 i. a representative of the New York State Association of Criminal  
42 Defense Lawyers;

43 j. a representative of the New York State Defenders Association; and

44 k. the president or chief executive officer of the League of Women  
45 Voters of New York state, or their designee, who shall chair the commit-  
46 tee.

47 2. The committee shall deliberate upon and apply the categories estab-  
48 lished in subdivision three of this section to select and maintain a  
49 pool of not less than twenty nor more than thirty-five qualified candi-  
50 dates for appointment to the commission. In such selection, it shall  
51 take into account the need for broad representation reflecting the  
52 geographic, racial, ethnic, gender and cultural diversity of the state's  
53 public defense clients. Organizations including, but not limited to, the  
54 following shall be solicited on a need basis to recommend candidates:

55 a. entities or plans providing public defense services and related  
56 human services;

1 b. professional legal organizations, including bar associations; and  
2 c. social justice organizations and civic organizations, especially  
3 organizations composed of or concerned with persons or groups who have  
4 been public defense clients and communities that include a high percent-  
5 age of public defense clients.

6 The committee shall meet biennially to select a new pool of candidates  
7 which may include candidates selected for previous pools. The League of  
8 Women Voters of New York State shall be entitled to reasonable expenses  
9 incurred in organizing the work of the committee.

10 3. The following shall be the categories of qualifications that the  
11 nominating committee shall utilize in nominating candidates for the  
12 commission:

13 a. experienced and distinguished trial and appellate criminal defense  
14 practitioners with a demonstrated and deep-rooted sensitivity to the  
15 complex issues affecting people in poverty and a proven commitment to  
16 enhancing the constitutional rights of clients and the client community;

17 b. persons with established credentials that demonstrate the ability  
18 to make innovations designed to conserve public resources while enhanc-  
19 ing legal or other human services to low income clients in the criminal  
20 justice system;

21 c. former consumers of public defense services who, having been exon-  
22 erated or having paid their debt to society by service of a sentence,  
23 have demonstrated a commitment to the improvement of legal services for  
24 those unable to afford counsel;

25 d. persons with a proven commitment to enhancing the constitutional  
26 rights of low income clients and who administer or have administered a  
27 public defense system in this state or a state public defense system in  
28 one of the United States of America whose experience can aid New York in  
29 formulating an organized statewide approach to ensuring quality local  
30 defense services; and

31 e. lawyers from moderate to large sized general practice law firms  
32 with an established and demonstrated commitment to resolving problems  
33 associated with the representation of low income people whose experience  
34 in the representation of clients can enhance the ability of public  
35 sector lawyers to take advantage of private sector firm management tech-  
36 niques.

37 S 6. Director of public defense services. The commission shall appoint  
38 a full time director of public defense services who shall be the chief  
39 administrative officer of the commission. The director shall be commit-  
40 ted to the professional representation of low income people, admitted or  
41 eligible and willing to seek admission to the practice of law in this  
42 state, have significant experience as an administrator of or practition-  
43 er in a public defense program or service and be appointed for a renewa-  
44 ble term of four years. The salary of the director shall be not less  
45 than the salary of the highest paid district attorney in the state.

46 S 7. General powers of the commission. The commission shall have  
47 power:

48 1. to sue and be sued, and to participate in actions and proceedings,  
49 whether judicial, administrative, arbitratative or otherwise;

50 2. to have a corporate seal, to alter such seal at pleasure, and to  
51 use it by causing it or a facsimile to be affixed or impressed or  
52 reproduced in any other manner;

53 3. to purchase, receive, take by grant, gift, devise, bequest or  
54 otherwise, lease, otherwise acquire, own, hold, improve, employ, use,  
55 and otherwise deal in and with real or personal property, or any inter-  
56 est therein, wherever situated;

1 4. to purchase, take, receive, subscribe for, otherwise acquire, own,  
2 hold, vote, employ, sell, lend, lease, exchange, transfer, otherwise  
3 dispose of, mortgage, pledge, use, and otherwise deal in and with bonds  
4 and other obligations, shares, or other securities or interests issued  
5 by others, whether engaged in similar or different business, govern-  
6 mental or other activities;

7 5. to offer participation in the New York state and local employees'  
8 retirement system for all its officers and employees, and to establish  
9 and carry out other retirement plans authorized pursuant to the retire-  
10 ment and social security law, which may be offered to all of its offi-  
11 cers and employees not participating in the New York state and local  
12 employees' retirement systems, and to establish and carry out other  
13 incentive and benefit plans, trusts and provisions for any or all of its  
14 officers and employees, subject to the applicable provisions of article  
15 fourteen of the civil service law;

16 6. to fix, compromise and collect rates, rentals, fees, lease payments  
17 and other charges for the services rendered by it or for use of the  
18 facilities owned, controlled or administered by, or in the exercise of  
19 the powers of the commission;

20 7. to conduct the activities of the commission and have offices and  
21 exercise the powers granted by this act but not to interfere with the  
22 professional responsibilities of any attorney to any client absent a  
23 clear violation by the attorney of the disciplinary rules of the code of  
24 professional responsibility set out in part 1200 of title 22 of the New  
25 York codes, rules and regulations;

26 8. to appoint such officers, employees and agents as the commission  
27 may require for the performance of its duties and to fix and determine  
28 their qualifications, duties and compensation;

29 9. to retain or employ counsel, auditors and other private consultants  
30 on a contract basis or otherwise for rendering professional, management  
31 or technical services and advice;

32 10. to make, adopt, amend, enforce and repeal rules for its governance  
33 and internal management and personnel practices;

34 11. to make and alter by-laws for its organization and management;

35 12. to designate the depositories of its money;

36 13. to establish its fiscal year; and

37 14. to do all things necessary, convenient or desirable, including  
38 ancillary and incidental activities, to carry out its purposes and for  
39 the exercise of the powers granted in this act.

40 S 8. Public defense services standards. The commission shall adopt,  
41 maintain and publish standards for the provision of public defense  
42 services. Such standards shall reflect national professional guidelines  
43 and standards in the field and shall include, but not be limited to:

44 1. independence of the defense function and quality of defense  
45 services;

46 2. reliability and sufficiency of defense funding;

47 3. vertical or continuous representation at the pre-trial and trial  
48 stages by the attorney either assigned or appointed, unless the client  
49 would demonstrably benefit from a change in counsel;

50 4. required participation by each attorney in approved training in the  
51 fundamentals and/or advanced techniques of criminal defense practice;

52 5. specified caseload/workload limitation levels;

53 6. investigative services;

54 7. the provision of social services or social services referrals;

55 8. availability of expert witnesses to assist counsel;

1 9. clerical assistance, interview facilities and the availability of  
2 law library and research materials to counsel; and

3 10. adequate supervision provided by experienced attorneys including  
4 mentoring to less experienced attorneys.

5 S 9. State financial assistance to localities and public defense  
6 providers for provision of public defense services. 1. Within amounts  
7 appropriated therefor, such moneys as are reasonable and necessary for  
8 the commission to operate and to pay the state financial assistance  
9 provided for in this act shall be disbursed to the commission.

10 2. Within funds appropriated therefor, the commission shall adopt a  
11 plan for state financial assistance to localities for the provision of  
12 public defense services.

13 3. A locality may apply to the commission for state financial assist-  
14 ance for defense services, or may elect to allow public defense provid-  
15 ers that receive local funds to seek state financial assistance direct-  
16 ly. To receive full state financial assistance pursuant to this section  
17 for the provision of defense services after the adoption by the commis-  
18 sion of standards for the provision of defense services pursuant to  
19 section eight of this act, a locality or provider shall demonstrate to  
20 the commission that it meets such standards; provided, however, that  
21 from the effective date of this act until one year after the promulga-  
22 tion of the public defense services standards, pursuant to section eight  
23 of this act, compliance shall be presumed.

24 4. Localities providing defense services, in whole or in part, pursu-  
25 ant to a plan of a bar association whereby the services of private counsel  
26 are rotated and coordinated by an administrator, pursuant to subdivi-  
27 sion 3 or subdivision 4 of section 722 of the county law and  
28 localities providing defense services, in whole or in part, through  
29 representation by a public defender appointed pursuant to article 18-A  
30 of the county law or representation by counsel furnished by a private  
31 legal aid bureau or society designated by the county or city, or by any  
32 not-for-profit corporation, voluntary association, or organization  
33 pursuant to subdivisions 1 and 2 of section 722 of the county law, may  
34 receive state financial assistance in an amount up to forty percent of  
35 the cost of such representation.

36 5. Financial assistance for defense services in the amount determined  
37 by the commission shall be a state charge payable on vouchers approved  
38 by the director of defense services after audit, within the restrictions  
39 of subdivision one of section sixteen of this act, by and on the warrant  
40 of the comptroller.

41 6. Any locality or provider receiving payments pursuant to the  
42 provisions of this section shall be obligated to expend local funds for  
43 defense services in the year it receives state assistance in an amount  
44 not less than the total amount it expended for defense services in the  
45 preceding year unless it can demonstrate to the commission that it has  
46 maintained or improved the quality of defense services with less expend-  
47 iture of funds.

48 S 10. Provision of defense services. The commission may establish the  
49 capability to provide defense services to public defense clients at the  
50 request of judges, public defense providers or local governments. Such  
51 services shall be provided pursuant to contract between the director and  
52 the public provider or locality.

53 S 11. Guidelines for eligibility for public defense services. Within  
54 policy parameters established by the commission, the director shall  
55 establish and disseminate at least annually guidelines for determining  
56 the eligibility of persons seeking public defense services.

1 S 12. Training. 1. The director shall provide training to or facili-  
2 tate training of attorneys providing public defense services. Such  
3 training shall be systematic, comprehensive and at least equal in scope  
4 to that received by attorneys appearing as adversaries of defense  
5 services providers. Training for attorneys shall include:

6 a. intensive entry-level training; and  
7 b. regular in-service training and participation in regional and  
8 national training programs to keep attorneys abreast of changes in law  
9 and procedure, make attorneys aware of relevant developments in science,  
10 technology and social science, and continue development of advocacy,  
11 negotiation and communication skills.

12 2. The director shall provide training to or facilitate training of  
13 non-legal public defense professionals in investigation, sentencing  
14 advocacy, paralegal skills and other relevant areas.

15 3. The director shall provide training to or facilitate training of  
16 appropriate support staff working with public defense providers, includ-  
17 ing training in the use of automation technology, communication skills  
18 and other relevant areas to increase efficiency and morale.

19 S 13. Oversight. 1. Within policy guidelines established by the  
20 commission, the director shall establish methods for gathering informa-  
21 tion about the provision of defense services including, but not limited  
22 to:

23 a. requiring localities and/or public defense services providers to  
24 furnish information about how defense services are provided;

25 b. publicizing the commission's oversight function and inviting the  
26 client community, concerned citizens, defense services providers, judg-  
27 es, members of the criminal justice community and others to provide  
28 information and express concerns about the provision of defense  
29 services;

30 c. instituting formal procedures for soliciting the views of the  
31 client community on specific issues affecting defense services and the  
32 criminal justice system; and

33 d. establishing formal and informal relationships with governmental,  
34 non-profit, community, judicial and other groups for the purpose of  
35 gathering information and opinions about defense services.

36 2. Within policy guidelines established by the commission, the direc-  
37 tor shall establish methods for improving the provision of public  
38 defense services. The director shall:

39 a. produce reports on problems in the provision of public defense  
40 services whenever the director deems that there is sufficient informa-  
41 tion to warrant such reports;

42 b. bring to the attention of any individual attorney, other defense  
43 services professional, institutional public defense provider or locality  
44 complaints made known to the director about the provision of defense  
45 services by that individual, institution or locality; and

46 c. Where a locality or public defense provider within a locality fails  
47 to meet the standards established by the commission pursuant to section  
48 eight of this act, make such failure known to the locality or public  
49 defense services provider as soon as it is apparent to the director, and  
50 work with the locality or public defense provider to bring the locality  
51 or public defense provider into compliance.

52 S 14. Annual report. The commission shall submit to the governor,  
53 temporary president of the senate, speaker of the assembly and the chief  
54 judge of the court of appeals an annual financial report on or before  
55 the thirtieth day of September. Such report shall contain all pertinent  
56 data for the prior twelve months on the operation of the commission

1 including cost of operation and financial assistance to localities. Such  
2 report shall also include the proposed budget for the succeeding twelve  
3 months including funds for financial assistance to localities.

4 S 15. Exempt status. It is hereby found, determined and declared that  
5 the creation of the commission and the carrying out of its corporate  
6 purposes is in all respects for the benefit of the people of the state  
7 and is a public purpose. The commission shall be performing an essential  
8 governmental function in the exercise of the powers conferred upon it by  
9 this act and the commission shall not be required to pay taxes or  
10 assessments upon any of the property acquired by it or under its juris-  
11 diction and control, or use of any moneys, revenues or other income  
12 received by the commission. All contributions made to the commission  
13 whether by gift, devise or bequest, shall qualify as deductions in  
14 computing the net taxable income of the donor for the purpose of income  
15 tax imposed by the state or any political subdivision thereof.

16 S 16. Confidentiality of public defense records. 1. The commission  
17 shall protect the confidences and secrets of public defense clients in  
18 accordance with the disciplinary rules of the code of professional  
19 responsibility set out in part 1200.19 of title 22 of the New York  
20 codes, rules and regulations, including clients to whom the commission  
21 provided, directly or indirectly, assistance or services. Notwithstand-  
22 ing any other provision of law to the contrary, no record or report  
23 shall be deemed deficient because of the omission of information, the  
24 provision of which would result in the disclosure of any such confi-  
25 dences or secrets, or would otherwise compromise the interest of any  
26 public defense client.

27 2. Notwithstanding any other provision of law to the contrary, the  
28 commission shall be exempt from the application of any provision of  
29 articles 6 and 7 of the public officers law.

30 S 17. Section 719 of the county law, as amended by chapter 682 of the  
31 laws of 1975, is amended to read as follows:

32 S 719. Expenses. If a public defender serves more than one county, the  
33 expenses of salaries, maintenance and operation of [his] SUCH PUBLIC  
34 DEFENDER'S office shall be shared by the participating counties in  
35 accordance with the provisions of the agreement establishing the office.  
36 Expenses incidental to individual cases shall be paid by the county for  
37 which the services were rendered. All expenses chargeable to a county  
38 [hereunder] PURSUANT TO THIS SECTION shall be a county charge to be paid  
39 upon certification by the county treasurer out of an appropriation made  
40 for such purposes, EXCEPT THAT CERTAIN EXPENSES MAY BE PAID WITH FINAN-  
41 CIAL ASSISTANCE FROM THE STATE AS AUTHORIZED BY SECTION NINE OF THE NEW  
42 YORK STATE PUBLIC DEFENSE COMMISSION ACT.

43 S 18. Section 720 of the county law, as amended by chapter 761 of the  
44 laws of 1966, is amended to read as follows:

45 S 720. Annual report. The public defender shall make an annual report  
46 to the board or boards of supervisors AND TO THE NEW YORK STATE PUBLIC  
47 DEFENSE COMMISSION covering all cases handled by [his] SUCH PUBLIC  
48 DEFENDER'S office during the preceding year.

49 S 19. Section 722-c of the county law, as amended by section 3 of part  
50 J of chapter 62 of the laws of 2003, is amended to read as follows:

51 S 722-c. Services other than counsel. Upon a finding in an ex parte  
52 proceeding that investigative, expert or other services are necessary  
53 and that the defendant or other person described in section two hundred  
54 forty-nine or section two hundred sixty-two of the family court act,  
55 article six-C of the correction law or section four hundred seven of the  
56 surrogate's court procedure act, is financially unable to obtain them,

1 the court shall authorize counsel, whether or not assigned in accordance  
2 with a plan, to obtain the services on behalf of the defendant or such  
3 other person. The court upon a finding that timely procurement of neces-  
4 sary services could not await prior authorization may authorize the  
5 services nunc pro tunc. The court shall determine reasonable compen-  
6 sation for the services and direct payment to the person who rendered  
7 them or to the person entitled to reimbursement. [Only in extraordinary  
8 circumstances may the court provide for compensation in excess of one  
9 thousand dollars per investigative, expert or other service provider.]

10 Each claim for compensation shall be supported by a sworn statement  
11 specifying the time expended, services rendered, expenses incurred and  
12 reimbursement or compensation applied for or received in the same case  
13 from any other source.

14 S 20. Section 722-e of the county law, as added by chapter 878 of the  
15 laws of 1965, is amended to read as follows:

16 S 722-e. Expenses. All expenses for providing counsel and services  
17 other than counsel [hereunder] PURSUANT TO THIS ARTICLE shall be a coun-  
18 ty charge or in the case of a county wholly located within a city a city  
19 charge to be paid out of an appropriation for such purposes, EXCEPT THAT  
20 CERTAIN EXPENSES MAY BE PAID FOR WITH FINANCIAL ASSISTANCE FROM THE  
21 STATE AS AUTHORIZED BY SECTION NINE OF THE NEW YORK STATE PUBLIC DEFENSE  
22 COMMISSION ACT.

23 S 21. Subdivision 1 of section 722-f of the county law, as added by  
24 chapter 761 of the laws of 1966 and as designated by section 4 of part J  
25 of chapter 62 of the laws of 2003, is amended to read as follows:

26 1. A public defender appointed pursuant to article eighteen-A of this  
27 chapter, a private legal aid bureau or society designated by a county or  
28 city pursuant to subdivision two of section seven hundred twenty-two of  
29 this [chapter] ARTICLE, and an administrator of a plan of a bar associ-  
30 ation appointed pursuant to subdivision three of section seven hundred  
31 twenty-two of this [chapter] ARTICLE shall file an annual report with  
32 the [judicial conference] NEW YORK STATE PUBLIC DEFENSE COMMISSION at  
33 such times and in such detail and form as [the judicial conference] SUCH  
34 COMMISSION may direct.

35 S 22. No existing right or remedy of any character shall be lost or  
36 impaired by reason of the provisions of this act. Any public employee  
37 transferred as a result of the provisions of this act shall be trans-  
38 ferred without further examination or qualification and shall retain his  
39 or her respective civil service classification and status.

40 S 23. Severability. If any clause, sentence, paragraph, subdivision or  
41 section of this act shall be adjudged by any court of competent juris-  
42 diction to be invalid, such judgment shall not affect, impair or invali-  
43 date the remainder thereof, but shall be confined in its operation to  
44 the clause, sentence, paragraph, subdivision or section thereof directly  
45 involved in the controversy in which such judgment shall have been  
46 rendered. It is hereby declared to be the intent of the legislature that  
47 this act would have been enacted even if such invalid provisions had not  
48 been included.

49 S 24. This act shall take effect immediately, and the appointment of  
50 members to the New York state public defense commission shall be  
51 completed within 90 days of such effective date, and the public defense  
52 services standards, required by section eight of this act, shall be  
53 promulgated within 180 days of the appointment of all members of the New  
54 York state public defense commission.