

10374

I N A S S E M B L Y

May 25, 2016

Introduced by M. of A. LENTOL -- read once and referred to the Committee
on Codes

AN ACT to amend the county law, the executive law and the state finance
law, in relation to requiring limits on the number of cases a public
defender may be assigned in any given year

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

1 Section 1. Legislative findings and declaration. In GIDEON V. WAIN-
2 WRIGHT, 372 U.S. 335 (1963) the United States Supreme Court held that
3 the 6th amendment right to counsel required states to assign defense
4 attorneys to defendants charged with serious offenses and who could not
5 afford counsel. This constitutional rule was subsequently extended to
6 require states to provide counsel to cases where a criminal conviction
7 could lead to imprisonment. In Gideon, the court held that the assign-
8 ment of counsel was essential to having a fair trial and was a constitu-
9 tional right of the accused which states could not violate.
10 In 2005, Judith Kaye, Chief Judge of the New York State Court of
11 Appeals, was appointed to head a state commission to review indigent
12 criminal defense in the state of New York. In 2006, The New York State
13 Commission on the Future of Indigent Defense Representation concluded
14 that "{t}he indigent defense system in New York State is both severely
15 dysfunctional and structurally incapable of providing each poor defend-
16 ant with the effective legal representation that he or she is guaranteed
17 by the Constitution of the United States and the Constitution and laws
18 of the State of New York." The commission also affirmed that the exces-
19 sive number of cases assigned to public defenders caused irreparable
20 harm to representation.
21 In 2009, the New York state legislature passed and Governor Paterson
22 signed into law "case caps" for public defenders in New York City.
23 Through the Office of Court Administration, the legislature supplemented
24 NYC's indigent defense budget to effectuate a judiciary rule which
25 limited annual criminal defense attorney caseloads to 400 misdemeanors
26 or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed
27 caseloads.

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

LBD14846-05-6

1 In October 2014, Judge Kaye's warning of an on-going crisis came to
2 fruition as the New York Civil Liberties Union and the law firm of
3 Schulte Roth & Zabel LLP announced a historic settlement that overhauled
4 public defense in five New York counties and paved the way for statewide
5 reform of New York's broken public defense system. By entering into the
6 agreement, New York state took responsibility for providing extensive
7 responsibility for managing and funding indigent legal services.

8 In HURRELL-HARRING V. NEW YORK, the plaintiffs charged that New York
9 state's decision to abdicate responsibility for public defense to its
10 counties resulted in a patchwork of often understaffed, poorly resourced
11 and largely dysfunctional public defense systems where defendants were
12 routinely arraigned without attorneys, urged to take plea bargains
13 regardless of the facts of their cases, burdened by excessively high
14 bail, and incarcerated for shockingly long periods for misdemeanors and
15 petty crimes. The suit contended that by failing to provide poor defend-
16 ants with adequate representation, New York state was violating the U.S.
17 Constitution, the state constitution and the laws of New York.

18 New York state settled on the eve of trial. Under the agreement, the
19 state adopted major reforms focusing on five New York counties - Ontar-
20 io, Onondaga (Syracuse), Schuyler, Suffolk and Washington - that were
21 chosen because their public defense systems are all different and cover
22 communities large and small, but are all emblems of New York's flawed
23 approach. The agreement, which will last seven and one-half years and is
24 subject to court approval, contains the following major provisions:

25 * Ensures that every poor criminal defendant will have a lawyer at the
26 first court appearance, where bail often is set and pleas taken;

27 * Requires New York to hire sufficient lawyers, investigators and
28 support staff to ensure that all poor criminal defendants have lawyers
29 with the time and support necessary to vigorously represent the defend-
30 ant;

31 * Provides for the setting of caseload standards that will substan-
32 tially limit the number of cases any lawyer can carry, thereby ensuring
33 that poor criminal defendants get a real defense;

34 * Requires New York to spend four million dollars over the next two
35 years to increase attorney communications with poor criminal defendants,
36 promote the use of investigators and experts, and improve the qualifica-
37 tions, training and supervision of lawyers representing indigent defend-
38 ants;

39 * Mandates the creation of eligibility standards for representation,
40 thus allowing more New Yorkers to access public defense services;

41 * Strengthens the Office of Indigent Legal Services as a state-level
42 oversight entity tasked with ensuring the constitutional provision of
43 public defense services and commits New York to provide the office with
44 the resources it needs to develop plans and implement and monitor
45 reforms mandated by the settlement; and

46 * Provides that the plaintiffs will receive detailed reports allowing
47 them to monitor compliance with the agreement and, if necessary, return
48 to court to enforce it.

49 In 2015, The Center for Court Innovation released a report titled AN
50 ANALYSIS OF MANDATORY CASE CAPS AND ATTORNEY WORKLOADS, concluding that
51 mandatory cases caps dramatically improved the quality of representation
52 in Kings County.

53 The legislature finds and declares that in all criminal proceedings
54 against people unable to afford counsel, New York state is constitu-
55 tionally responsible for ensuring this fundamental right. However,
56 because of the long history of county/city funding and recognizing that

1 a complete state takeover of indigent criminal defense services is
2 financially unattainable at this moment in time, the legislature will
3 take steps to ensure that the right to effective counsel is protected
4 against caseloads that compromise this right.

5 The legislature finds and declares that the state is obligated to take
6 initiatives to improve the quality of indigent defense, ensure represen-
7 tation at arraignment, and implement caseload standards for providers of
8 indigent legal services and implementing statewide standards for deter-
9 mining eligibility. To advance these initiatives the state shall pay
10 counties the full amount necessary to cover the costs of caseloads which
11 exceed the formula provided for herein.

12 S 2. The county law is amended by adding a new section 722-g to read
13 as follows:

14 S 722-G. RESTRICTIONS ON CASELOADS. THE STATE SHALL REIMBURSE ANY
15 COUNTY OR CITY FOR INDIVIDUAL CASELOADS ANNUALLY EXCEEDING THREE HUNDRED
16 SIXTY-SEVEN MISDEMEANORS OR ONE HUNDRED THIRTY-EIGHT FELONIES, WITH EACH
17 FELONY COUNTING AS TWO AND SIXTY-SIX-HUNDREDTHS MISDEMEANORS IN MIXED
18 CASELOADS. FUNDS TO PAY FOR CASELOADS EXCEEDING THIS FORMULA SHALL BE
19 REIMBURSED BY THE STATE TO THE COUNTY OR CITY PROVIDING SUCH SERVICES,
20 PROVIDED, HOWEVER, THAT IN THE STATE FISCAL YEAR:

21 1. BEGINNING APRIL FIRST, TWO THOUSAND SEVENTEEN, THE STATE SHALL
22 PROVIDE REIMBURSEMENT FOR NOT LESS THAN TWENTY-FIVE PERCENT OF SUCH
23 EXPENSES;

24 2. ON APRIL FIRST, TWO THOUSAND EIGHTEEN, THE STATE SHALL PROVIDE
25 REIMBURSEMENT FOR NOT LESS THAN FIFTY PERCENT OF THE EXPENSES;

26 3. ON APRIL FIRST, TWO THOUSAND NINETEEN, THE STATE SHALL PROVIDE
27 REIMBURSEMENT FOR NOT LESS THAN SEVENTY-FIVE PERCENT OF SUCH EXPENSES;
28 AND

29 4. TWO THOUSAND TWENTY AND THEREAFTER THE STATE SHALL PROVIDE
30 REIMBURSEMENT FOR THE FULL AMOUNT OF SUCH EXPENSES.

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

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

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

41 (N) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO
42 CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE
43 PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT
44 CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR
45 ATTORNEYS PROVIDING MANDATED REPRESENTATION THAT ALLOW FOR MEANINGFUL
46 AND EFFECTIVE ASSISTANCE OF COUNSEL; ASSESS STATEWIDE CASELOADS AND
47 ALLOCATE MONIES TO COUNTIES AND CITIES CONSISTENT WITH SECTION SEVEN
48 HUNDRED TWENTY-TWO-G OF THE COUNTY LAW, AND (III) IMPROVE THE QUALITY OF
49 MANDATED REPRESENTATION.

50 S 4. Subdivision 3 of section 98-b of the state finance law is amended
51 by adding three new paragraphs (e), (f) and (g) to read as follows:

52 (E) THE OFFICE OF INDIGENT LEGAL SERVICES MAY EXPEND A PORTION OF THE
53 FUNDS AVAILABLE IN SUCH FUND TO PROVIDE FOR CASELOAD RELIEF IN ACCORD-
54 ANCE WITH SECTION SEVEN HUNDRED TWENTY TWO-G OF THE COUNTY LAW, UP TO AN
55 ANNUAL AMOUNT OF SIXTY-SEVEN MILLION DOLLARS.

1 (F) FOR THE PURPOSE OF CASELOAD RELIEF AND PURSUANT TO SEVEN HUNDRED
2 TWENTY-TWO-G OF THE COUNTY LAW, AN ANNUAL AMOUNT OF SIXTY-SEVEN MILLION
3 DOLLARS SHALL BE MADE AVAILABLE TO EVERY COUNTY, EXCEPT THE CITY OF NEW
4 YORK, SUFFOLK COUNTY, WASHINGTON COUNTY, ONTARIO COUNTY, ONONDAGA COUN-
5 TY, AND SCHUYLER COUNTY FROM SUCH FUND FOR THE PROVISION OF SERVICES
6 PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-G OF THE COUNTY LAW;
7 PROVIDED THAT EVERY COUNTY, EXCEPT THE CITY OF NEW YORK CONTINUE TO
8 PROVIDE AT MINIMUM THE AGGREGATE AMOUNT OF FUNDING FOR PUBLIC DEFENSE
9 SERVICES INCLUDING, BUT NOT LIMITED TO, THE AMOUNT OF FUNDING FOR
10 CONTRACTORS OF PUBLIC DEFENSE SERVICES AND INDIVIDUAL DEFENSE ATTORNEYS,
11 THAT IT PROVIDED, PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW
12 DURING ITS TWO THOUSAND SIXTEEN--TWO THOUSAND SEVENTEEN FISCAL YEAR.

13 (G) FUNDS TO PAY FOR CASELOADS EXCEEDING THIS FORMULA SHALL BE REIM-
14 BURED BY THE STATE TO THE COUNTY OR CITY PROVIDING SUCH SERVICES,
15 PROVIDED, HOWEVER, THAT IN THE STATE FISCAL YEAR:

16 (I) BEGINNING APRIL FIRST, TWO THOUSAND SEVENTEEN, THE STATE SHALL
17 PROVIDE REIMBURSEMENT FOR NOT LESS THAN TWENTY-FIVE PERCENT OF SUCH
18 EXPENSES;

19 (II) ON APRIL FIRST, TWO THOUSAND EIGHTEEN, THE STATE SHALL PROVIDE
20 REIMBURSEMENT FOR NOT LESS THAN FIFTY PERCENT OF THE EXPENSES;

21 (III) ON APRIL FIRST, TWO THOUSAND NINETEEN, THE STATE SHALL PROVIDE
22 REIMBURSEMENT FOR NOT LESS THAN SEVENTY-FIVE PERCENT OF SUCH EXPENSES;
23 AND

24 (IV) IN TWO THOUSAND TWENTY AND THEREAFTER THE STATE SHALL PROVIDE
25 REIMBURSEMENT FOR THE FULL AMOUNT OF SUCH EXPENSES.

26 S 5. This act shall take effect immediately.