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

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2015-2016 Regular Sessions

I N A S S E M B L Y

March 17, 2015

Introduced by M. of A. FAHY, LENTOL, AUBRY, McDONALD, STECK, GOTTFRIED, MAGNARELLI, CRESPO, SEPULVEDA, ARROYO, SIMOTAS, MAGEE, COLTON, DUPREY, CROUCH, MONTESANO, RAIA, ROSENTHAL, WOERNER, RUSSELL, BRINDISI, MOSLEY, PALMESANO -- Multi-Sponsored by -- M. of A. COOK, GLICK, HEVESI, HIKIND, SIMON, WEINSTEIN -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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

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

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

New York state has chosen to fulfill its obligation to provide representation to indigent persons accused of a crime by requiring each county outside New York city and New York city to implement and fund a plan to provide such representation. In 2006 the Commission on the Future of Indigent Legal Services concluded that a system of county operated and funded indigent defense services failed to satisfy the constitutional obligation to protect the rights of indigent persons accused of a crime.

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

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Such Commission recommended that funding for indigent legal services come from the State's general fund rather than from the counties.

New York state has entered into an agreement to settle a class action lawsuit that alleged deprivation of the right to counsel in five counties. The agreement acknowledges that the Office of Indigent Legal Services and the Indigent Legal Services Board are authorized "to monitor and study indigent legal services in the state, to recommend measures to improve those services, to award grant monies to counties to support their indigent representation capability, and to establish criteria for the distribution of such funds." While the settlement agreement pertains to only five counties, its criteria establish a standard for providing indigent legal services that should apply statewide.

The legislature finds and declares that in all criminal proceedings against people unable to afford counsel, New York state is constitutionally required to provide public defense services. The legislature further finds that the state is obligated to undertake initiatives to improve the quality of indigent defense, ensure representation at arraignment, implement caseload standards for providers of indigent legal services, and implement statewide standards for determining eligibility for mandated representation. Mandating counties to finance the state's obligation to provide indigent legal services imposes a significant uncontrollable financial burden on counties dependent on real property taxes to fund needed services, and subject to a state imposed tax cap.

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

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

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

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

(B) APRIL FIRST, TWO THOUSAND SEVENTEEN, THE STATE SHALL PROVIDE REIMBURSEMENT FOR NOT LESS THAN FIFTY PERCENT OF SUCH EXPENSES; AND

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

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

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

(O) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR ATTORNEYS PROVIDING MANDATED REPRESENTATION THAT ALLOW FOR MEANINGFUL AND EFFECTIVE ASSISTANCE OF COUNSEL, AND (III) IMPROVE THE QUALITY OF MANDATED REPRESENTATION.

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

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

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

(N) TO REVIEW THE PUBLIC DEFENSE OPERATIONS OF ANY COUNTY FOR COMPLIANCE WITH APPLICABLE PROFESSIONAL STANDARDS PROMULGATED BY THE OFFICE AND TO ENSURE THAT RECIPIENTS OF SERVICES PROVIDED PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW ARE PROVIDED WITH MEANINGFUL AND EFFECTIVE REPRESENTATION BEFORE MAKING REIMBURSEMENT PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-E OF THE COUNTY LAW; AND

S 5. This act shall take effect immediately.