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, LAVINE, BRONSON, SKOUFIS, BARCLAY, BLANKENBUSH, CAHILL, STEC, MURRAY, BARRETT, PEOPLES-STOKES, BUTLER, LUPARDO, LALOR, PICHARDO, LINARES, RIVERA, STIRPE, WALKER, JAFFEE, O'DONNELL, FINCH, RAMOS, RYAN, HUNTER, DAVILA, GRAF, RODRIGUEZ, BRABENEC, OTIS, TITUS, PERRY, OAKS, MAYER, GUNTHER, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BLAKE, BRENNAN, COOK, GALEF, GIGLIO, GLICK, HAWLEY, HEVESI, HIKIND, LIFTON, LOPEZ, MARKEY, ROBINSON, SCHIMEL, SIMON, SKARTADOS, 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 -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law, the executive law and the state finance 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, wheth-

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

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er 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. 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 SEVENTEEN, THE STATE SHALL PROVIDE REIMBURSEMENT FOR NOT LESS THAN TWENTY-FIVE PERCENT OF SUCH EXPENSES; AND

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

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

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

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

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

(G) 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 BEFORE MAKING PAYMENT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION NINETY-EIGHT-B OF THE STATE FINANCE LAW; AND

S 5. Subdivision 3 of section 98-b of the state finance law, as amended by section 2 of part E of chapter 56 of the laws of 2010, is amended to read as follows:

3. Amounts distributed from such fund shall be limited to amounts appropriated therefor and shall be distributed as follows:

(a) The office of court administration may expend a portion of the funds available in such fund to provide assigned counsel paid in accordance with section thirty-five of the judiciary law, up to an annual sum of twenty-five million dollars.

(b) [An] IN ADDITION TO THE AMOUNTS PAID TO EACH COUNTY AND THE CITY OF NEW YORK PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-E OF THE COUNTY LAW AND IN ACCORDANCE WITH SECTIONS EIGHT HUNDRED THIRTY-TWO AND EIGHT HUNDRED THIRTY-THREE OF THE EXECUTIVE LAW AN annual amount [of forty million dollars shall be made available to the city of New York from such fund for the provision of services pursuant to article eighteen-B of the county law; provided that the city of New York shall continue to provide at minimum the aggregate amount of funding for public defense services including, but not limited to, the amount of funding for contractors of public defense services and individual defense attorneys, that it provided, pursuant to article eighteen-B of the county law during its two thousand nine--two thousand ten fiscal year] SHALL BE

PAID TO SUCH COUNTIES AND CITY EQUAL TO THE AMOUNT PAID FROM SUCH FUND TO SUCH COUNTIES AND CITY IN MARCH TWO THOUSAND TEN.

(c) [Within the first fifteen days of March two thousand eleven, each county other than a county wholly contained within the city of New York, shall receive ninety percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand twelve, each county other than a county wholly contained within the city of New York shall receive seventy-five percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand thirteen, each county other than a county wholly contained within the city of New York shall receive fifty percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand fourteen, each county other than a county wholly contained within the city of New York shall receive twenty-five percent of the amount paid to such county in March two thousand ten. For all state fiscal years following the two thousand thirteen--two thousand fourteen fiscal year, there shall be no required annual payments pursuant to this paragraph. Notwithstanding the provisions of this paragraph, for each of the four required payments made to counties within the first fifteen days of March two thousand eleven, two thousand twelve, two thousand thirteen and two thousand fourteen, Hamilton and Orleans counties shall receive such percentage payments based on the amounts that each county would have received in March two thousand ten had it satisfied the maintenance of effort requirement set forth in paragraph (c) of subdivision four of this section in effect on such date.

(d)] Remaining amounts within such fund, after accounting for annual payments required in paragraphs (a)[,] AND (b) [and (c)] of this subdivision and subparagraph (iii) of paragraph (a) of subdivision two of this section shall be distributed in accordance with sections eight hundred thirty-two and eight hundred thirty-three of the executive law.

S 6. This act shall take effect April 1, 2017.