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

7481

I N S E N A T E

May 4, 2016

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration. In GIDEON V. WAINWRIGHT, 372 U.S. 335 (1963) the United States Supreme Court held that the 6th amendment right to counsel required states to assign defense attorneys to defendants charged with serious offenses and who could not afford counsel. This constitutional rule was subsequently extended to require states to provide counsel to cases where a criminal conviction could lead to imprisonment. In Gideon, the court held that the assignment of counsel was essential to having a fair trial and was a constitutional right of the accused which states could not violate.

In 2005, Judith Kaye, Chief Judge of the New York State Court of Appeals, was appointed to head a state commission to review indigent criminal defense in the state of New York. In 2006, The New York State Commission on the Future of Indigent Defense Representation concluded that "{t}he indigent defense system in New York State is both severely dysfunctional and structurally incapable of providing each poor defendant with the effective legal representation that he or she is guaranteed by the Constitution of the United States and the Constitution and laws of the State of New York." The commission also affirmed that the excessive number of cases assigned to public defenders caused irreparable harm to representation.

In 2009, the New York state legislature passed and Governor Paterson signed into law "case caps" for public defenders in New York City. Through the Office of Court Administration, the legislature supplemented NYC's indigent defense budget to effectuate a judiciary rule which limited annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads.

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

LBD14846-05-6

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

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

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

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

* Requires New York to hire sufficient lawyers, investigators and support staff to ensure that all poor criminal defendants have lawyers with the time and support necessary to vigorously represent the defendant;

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

* Requires New York to spend four million dollars over the next two years to increase attorney communications with poor criminal defendants, promote the use of investigators and experts, and improve the qualifications, training and supervision of lawyers representing indigent defendants;

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

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

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

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

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

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

The legislature finds and declares that the state is obligated to take initiatives to improve the quality of indigent defense, ensure representation at arraignment, and implement caseload standards for providers of indigent legal services and implementing statewide standards for determining eligibility. To advance these initiatives the state shall pay counties the full amount necessary to cover the costs of caseloads which exceed the formula provided for herein.

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

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

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

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

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

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

S 3. 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[.]; AND

(N) 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; ASSESS STATEWIDE CASELOADS AND ALLOCATE MONIES TO COUNTIES AND CITIES CONSISTENT WITH SECTION SEVEN HUNDRED TWENTY-TWO-G OF THE COUNTY LAW, AND (III) IMPROVE THE QUALITY OF MANDATED REPRESENTATION.

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

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

(F) FOR THE PURPOSE OF CASELOAD RELIEF AND PURSUANT TO SEVEN HUNDRED TWENTY-TWO-G OF THE COUNTY LAW, AN ANNUAL AMOUNT OF SIXTY-SEVEN MILLION DOLLARS SHALL BE MADE AVAILABLE TO EVERY COUNTY, EXCEPT THE CITY OF NEW YORK, SUFFOLK COUNTY, WASHINGTON COUNTY, ONTARIO COUNTY, ONONDAGA COUNTY, AND SCHUYLER COUNTY FROM SUCH FUND FOR THE PROVISION OF SERVICES PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-G OF THE COUNTY LAW; PROVIDED THAT EVERY COUNTY, EXCEPT THE CITY OF NEW YORK 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 SIXTEEN--TWO THOUSAND SEVENTEEN FISCAL YEAR.

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

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

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

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

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

S 5. This act shall take effect immediately.