

10374

I N   A S S E M B L Y

May 25, 2016

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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.

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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 BURSED 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.