

10706

I N A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fahy) --  
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 indigent defense services

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. It is a fundamental  
2 right of all persons in the United States to be represented by counsel  
3 in all criminal prosecutions. In the case of GIDEON V. WAINWRIGHT, 372  
4 U.S. 335, the United States Supreme Court ruled that indigent persons  
5 accused in state felony cases who were unable to afford counsel had a  
6 constitutional right to be defended by an appointed attorney paid by the  
7 state. Subsequently, the Supreme Court determined that indigent persons  
8 accused of any criminal charge that could result in imprisonment, wheth-  
9 er a felony or misdemeanor, are entitled to counsel at the expense of  
10 the state.

11 New York state has chosen to fulfill its obligation to provide repre-  
12 sentation to indigent persons accused of a crime by requiring each coun-  
13 ty outside New York city and New York city to implement and fund a plan  
14 to provide such representation. In 2006 the Commission on the Future of  
15 Indigent Legal Services concluded that a system of county operated and  
16 funded indigent defense services failed to satisfy the constitutional  
17 obligation to protect the rights of indigent persons accused of a crime.  
18 Such Commission recommended that funding for indigent legal services  
19 come from the State's general fund rather than from the counties.

20 New York state has entered into an agreement to settle a class action  
21 lawsuit that alleged deprivation of the right to counsel in five coun-  
22 ties. The agreement acknowledges that the Office of Indigent Legal  
23 Services and the Indigent Legal Services Board are authorized "to moni-  
24 tor and study indigent legal services in the state, to recommend meas-  
25 ures to improve those services, to award grant monies to counties to  
26 support their indigent representation capability, and to establish  
27 criteria for the distribution of such funds." While the settlement

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

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1 agreement pertains to only five counties, its criteria establish a stan-  
2 dard for providing indigent legal services that should apply statewide.

3 The legislature finds and declares that in all criminal proceedings  
4 against people unable to afford counsel, New York state is constitu-  
5 tionally required to provide public defense services. The legislature  
6 further finds that the state is obligated to undertake initiatives to  
7 improve the quality of indigent defense, ensure representation at  
8 arraignment, implement caseload standards for providers of indigent  
9 legal services, and implement statewide standards for determining eligi-  
10 bility for mandated representation. Mandating counties to finance the  
11 state's obligation to provide indigent legal services imposes a signif-  
12 icant uncontrollable financial burden on counties dependent on real  
13 property taxes to fund needed services, and subject to a state imposed  
14 tax cap.

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

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

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

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

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

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

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

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

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

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

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

47 (N) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO  
48 CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE  
49 PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT  
50 CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR  
51 ATTORNEYS PROVIDING MANDATED REPRESENTATION, AND (III) IMPROVE THE QUAL-  
52 ITY OF MANDATED REPRESENTATION.

53 S 4. Subdivision 3 of section 98-b of the state finance law, as  
54 amended by section 2 of part E of chapter 56 of the laws of 2010, is  
55 amended to read as follows:

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

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

7 (b) [An] IN ADDITION TO THE AMOUNTS PAID TO EACH COUNTY AND THE CITY  
8 OF NEW YORK PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-E OF THE COUNTY  
9 LAW AND IN ACCORDANCE WITH SECTIONS EIGHT HUNDRED THIRTY-TWO AND EIGHT  
10 HUNDRED THIRTY-THREE OF THE EXECUTIVE LAW AN annual amount [of forty  
11 million dollars shall be made available to the city of New York from  
12 such fund for the provision of services pursuant to article eighteen-B  
13 of the county law; provided that the city of New York shall continue to  
14 provide at minimum the aggregate amount of funding for public defense  
15 services including, but not limited to, the amount of funding for  
16 contractors of public defense services and individual defense attorneys,  
17 that it provided, pursuant to article eighteen-B of the county law  
18 during its two thousand nine--two thousand ten fiscal year] SHALL BE  
19 PAID TO SUCH COUNTIES AND CITY EQUAL TO THE AMOUNT PAID FROM SUCH FUND  
20 TO SUCH COUNTIES AND CITY IN MARCH TWO THOUSAND TEN.

21 (c) [Within the first fifteen days of March two thousand eleven, each  
22 county other than a county wholly contained within the city of New York,  
23 shall receive ninety percent of the amount paid to such county in March  
24 two thousand ten. Within the first fifteen days of March two thousand  
25 twelve, each county other than a county wholly contained within the city  
26 of New York shall receive seventy-five percent of the amount paid to  
27 such county in March two thousand ten. Within the first fifteen days of  
28 March two thousand thirteen, each county other than a county wholly  
29 contained within the city of New York shall receive fifty percent of the  
30 amount paid to such county in March two thousand ten. Within the first  
31 fifteen days of March two thousand fourteen, each county other than a  
32 county wholly contained within the city of New York shall receive twen-  
33 ty-five percent of the amount paid to such county in March two thousand  
34 ten. For all state fiscal years following the two thousand thirteen--two  
35 thousand fourteen fiscal year, there shall be no required annual  
36 payments pursuant to this paragraph. Notwithstanding the provisions of  
37 this paragraph, for each of the four required payments made to counties  
38 within the first fifteen days of March two thousand eleven, two thousand  
39 twelve, two thousand thirteen and two thousand fourteen, Hamilton and  
40 Orleans counties shall receive such percentage payments based on the  
41 amounts that each county would have received in March two thousand ten  
42 had it satisfied the maintenance of effort requirement set forth in  
43 paragraph (c) of subdivision four of this section in effect on such  
44 date.

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

50 S 5. This act shall take effect April 1, 2017.