

6202--B

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, HEVE-SI, 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:

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.

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

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

3 New York state has entered into an agreement to settle a class action
4 lawsuit that alleged deprivation of the right to counsel in five coun-
5 ties. The agreement acknowledges that the Office of Indigent Legal
6 Services and the Indigent Legal Services Board are authorized "to moni-
7 tor and study indigent legal services in the state, to recommend meas-
8 ures to improve those services, to award grant monies to counties to
9 support their indigent representation capability, and to establish
10 criteria for the distribution of such funds." While the settlement
11 agreement pertains to only five counties, its criteria establish a stan-
12 dard for providing indigent legal services that should apply statewide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 S 5. This act shall take effect immediately.