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I N S E N A T E

(PREFILED)

January 6, 2016

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

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

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

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

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

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

40 (O) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO
41 CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE
42 PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT
43 CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR
44 ATTORNEYS PROVIDING MANDATED REPRESENTATION THAT ALLOW FOR MEANINGFUL
45 AND EFFECTIVE ASSISTANCE OF COUNSEL, AND (III) IMPROVE THE QUALITY OF
46 MANDATED REPRESENTATION.

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

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

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

1 (N) TO REVIEW THE PUBLIC DEFENSE OPERATIONS OF ANY COUNTY FOR COMPLI-
2 ANCE WITH APPLICABLE PROFESSIONAL STANDARDS PROMULGATED BY THE OFFICE
3 AND TO ENSURE THAT RECIPIENTS OF SERVICES PROVIDED PURSUANT TO ARTICLE
4 EIGHTEEN-B OF THE COUNTY LAW ARE PROVIDED WITH MEANINGFUL AND EFFECTIVE
5 REPRESENTATION BEFORE MAKING REIMBURSEMENT PURSUANT TO SECTION SEVEN
6 HUNDRED TWENTY-TWO-E OF THE COUNTY LAW; AND
7 S 5. This act shall take effect immediately.