

# STATE OF NEW YORK

1903

2017-2018 Regular Sessions

## IN ASSEMBLY

January 13, 2017

Introduced by M. of A. FAHY, LENTOL, AUBRY, McDONALD, STECK, GOTTFRIED, MAGNARELLI, CRESPO, SEPULVEDA, ARROYO, SIMOTAS, MAGEE, COLTON, CROUCH, MONTESANO, RAIA, ROSENTHAL, WOERNER, JENNE, BRINDISI, MOSLEY, PALMESANO, BRONSON, SKOUFIS, BARCLAY, BLANKENBUSH, CAHILL, STEC, MURRAY, BARRETT, PEOPLES-STOKES, BUTLER, LUPARDO, LALOR, PICHARDO, RIVERA, STIRPE, WALKER, JAFFEE, O'DONNELL, FINCH, RAMOS, RYAN, HUNTER, DAVILA, GRAF, RODRIGUEZ, BRABENEC, OTIS, TITUS, PERRY, OAKS, MAYER, GUNTHER, ENGLEBRIGHT, WEPRIN, KEARNS, ORTIZ, RICHARDSON, HYNDMAN, ABBATE, BUCHWALD, ZEBROWSKI, SIMON, SEAWRIGHT, GLICK, BLAKE, COOK, GALEF, GIGLIO, HAWLEY, HEVESI, HIKIND, LIFTON, LOPEZ, SKARTADOS -- 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 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

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

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1 obligation to protect the rights of indigent persons accused of a crime.  
2 Such Commission recommended that funding for indigent legal services  
3 come from the State's general fund rather than from the counties.

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

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

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

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

33 § 722-e. Expenses. All expenses for providing counsel and services  
34 other than counsel hereunder shall be a county charge or in the case of  
35 a county wholly located within a city a city charge to be paid out of an  
36 appropriation for such purposes and shall be reimbursed by the state to  
37 the county or city providing such services, provided, however, that in  
38 the state fiscal year beginning:

39 (a) April first, two thousand eighteen, the state shall provide  
40 reimbursement for not less than twenty-five percent of such expenses;  
41 and

42 (b) April first, two thousand nineteen, the state shall provide  
43 reimbursement for not less than thirty-five percent of such expenses;  
44 and

45 (c) April first, two thousand twenty, the state shall provide  
46 reimbursement for not less than forty-five percent of such expenses; and

47 (d) April first, two thousand twenty-one, the state shall provide  
48 reimbursement for not less than fifty-five percent of such expenses; and

49 (e) April first, two thousand twenty-two, the state shall provide  
50 reimbursement for not less than sixty-five percent of such expenses; and

51 (f) April first, two thousand twenty-three, the state shall provide  
52 reimbursement for not less than seventy-five percent of such expenses;  
53 and

54 (g) every year thereafter, the state shall provide reimbursement for  
55 the full amount of such expenses.

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

(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, and (iii) improve the quality of mandated representation.

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

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

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

(b) ~~[An]~~ In addition to the amounts paid to each county and the city of New York pursuant to section seven hundred twenty-two-e of the county law and in accordance with sections eight hundred thirty-two and eight hundred thirty-three of the executive law an annual amount ~~[of forty million dollars shall be made available to the city of New York from such fund for the provision of services pursuant to article eighteen-B of the county law; provided that the city of New York shall 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 nine--two thousand ten fiscal year]~~ shall be paid to such counties and city equal to the amount paid from such fund to such counties and city in March two thousand ten.

(c) ~~[Within the first fifteen days of March two thousand eleven, each county other than a county wholly contained within the city of New York, shall receive ninety percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand twelve, each county other than a county wholly contained within the city of New York shall receive seventy five percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand thirteen, each county other than a county wholly contained within the city of New York shall receive fifty percent of the amount paid to such county in March two thousand ten. Within the first fifteen days of March two thousand fourteen, each county other than a county wholly contained within the city of New York shall receive twenty five percent of the amount paid to such county in March two thousand ten. For all state fiscal years following the two thousand thirteen--two thousand fourteen fiscal year, there shall be no required annual payments pursuant to this paragraph. Notwithstanding the provisions of this paragraph, for each of the four required payments made to counties within the first fifteen days of March two thousand eleven, two thousand twelve, two thousand thirteen and two thousand fourteen, Hamilton and Orleans counties shall receive such percentage payments based on the amounts that each county would have received in March two thousand ten had it satisfied the maintenance of effort requirement set forth in paragraph (c) of subdivision four of this section in effect on such date.~~

1     ~~(d)~~] Remaining amounts within such fund, after accounting for annual  
2     payments required in paragraphs (a)[~~r~~] ~~and~~ (b) [~~and~~ ~~(e)~~] of this subdi-  
3     vision and subparagraph (iii) of paragraph (a) of subdivision two of  
4     this section shall be distributed in accordance with sections eight  
5     hundred thirty-two and eight hundred thirty-three of the executive law.  
6     § 5. This act shall take effect April 1, 2018.