

STATE OF NEW YORK

4032

2017-2018 Regular Sessions

IN SENATE

February 2, 2017

Introduced by Sens. BAILEY, COMRIE, HAMILTON, MONTGOMERY, PARKER,
PERKINS, PERSAUD -- read twice and ordered printed, and when printed
to be committed to the Committee on Local Government

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

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

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1 NYC's indigent defense budget to effectuate a judiciary rule which
2 limited annual criminal defense attorney caseloads to 400 misdemeanors
3 or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed
4 caseloads.

5 In October 2014, Judge Kaye's warning of an on-going crisis came to
6 fruition as the New York Civil Liberties Union and the law firm of
7 Schulte Roth & Zabel LLP announced a historic settlement that overhauled
8 public defense in five New York counties and paved the way for statewide
9 reform of New York's broken public defense system. By entering into the
10 agreement, New York state took responsibility for providing extensive
11 responsibility for managing and funding indigent legal services.

12 In Hurrell-Harring v. New York, the plaintiffs charged that New York
13 state's decision to abdicate responsibility for public defense to its
14 counties resulted in a patchwork of often understaffed, poorly resourced
15 and largely dysfunctional public defense systems where defendants were
16 routinely arraigned without attorneys, urged to take plea bargains
17 regardless of the facts of their cases, burdened by excessively high
18 bail, and incarcerated for shockingly long periods for misdemeanors and
19 petty crimes. The suit contended that by failing to provide poor defend-
20 ants with adequate representation, New York state was violating the U.S.
21 Constitution, the state constitution and the laws of New York.

22 New York state settled on the eve of trial. Under the agreement, the
23 state adopted major reforms focusing on five New York counties - Ontar-
24 io, Onondaga (Syracuse), Schuyler, Suffolk and Washington - that were
25 chosen because their public defense systems are all different and cover
26 communities large and small, but are all emblems of New York's flawed
27 approach. The agreement, which will last seven and one-half years and is
28 subject to court approval, contains the following major provisions:

29 * Ensures that every poor criminal defendant will have a lawyer at the
30 first court appearance, where bail often is set and pleas taken;

31 * Requires New York to hire sufficient lawyers, investigators and
32 support staff to ensure that all poor criminal defendants have lawyers
33 with the time and support necessary to vigorously represent the defend-
34 ant;

35 * Provides for the setting of caseload standards that will substan-
36 tially limit the number of cases any lawyer can carry, thereby ensuring
37 that poor criminal defendants get a real defense;

38 * Requires New York to spend four million dollars over the next two
39 years to increase attorney communications with poor criminal defendants,
40 promote the use of investigators and experts, and improve the qualifica-
41 tions, training and supervision of lawyers representing indigent defend-
42 ants;

43 * Mandates the creation of eligibility standards for representation,
44 thus allowing more New Yorkers to access public defense services;

45 * Strengthens the Office of Indigent Legal Services as a state-level
46 oversight entity tasked with ensuring the constitutional provision of
47 public defense services and commits New York to provide the office with
48 the resources it needs to develop plans and implement and monitor
49 reforms mandated by the settlement; and

50 * Provides that the plaintiffs will receive detailed reports allowing
51 them to monitor compliance with the agreement and, if necessary, return
52 to court to enforce it.

53 In 2015, The Center for Court Innovation released a report titled An
54 Analysis of Mandatory Case Caps and Attorney Workloads, concluding that
55 mandatory cases caps dramatically improved the quality of representation
56 in Kings County.

1 The legislature finds and declares that in all criminal proceedings
2 against people unable to afford counsel, New York state is constitu-
3 tionally responsible for ensuring this fundamental right. However,
4 because of the long history of county/city funding and recognizing that
5 a complete state takeover of indigent criminal defense services is
6 financially unattainable at this moment in time, the legislature will
7 take steps to ensure that the right to effective counsel is protected
8 against caseloads that compromise this right.

9 The legislature finds and declares that the state is obligated to take
10 initiatives to improve the quality of indigent defense, ensure represen-
11 tation at arraignment, and implement caseload standards for providers of
12 indigent legal services and implementing statewide standards for deter-
13 mining eligibility. To advance these initiatives the state shall pay
14 counties the full amount necessary to cover the costs of caseloads which
15 exceed the formula provided for herein.

16 § 2. The county law is amended by adding a new section 722-g to read
17 as follows:

18 § 722-g. Restrictions on caseloads. The state shall reimburse any
19 county or city for individual caseloads annually exceeding three hundred
20 sixty-seven misdemeanors or one hundred thirty-eight felonies, with each
21 felony counting as two and sixty-six-hundredths misdemeanors in mixed
22 caseloads. Funds to pay for caseloads exceeding this formula shall be
23 reimbursed by the state to the county or city providing such services,
24 provided, however, that in the state fiscal year:

25 1. beginning April first, two thousand eighteen, the state shall
26 provide reimbursement for not less than twenty-five percent of such
27 expenses;

28 2. on April first, two thousand nineteen, the state shall provide
29 reimbursement for not less than fifty percent of the expenses;

30 3. on April first, two thousand twenty, the state shall provide
31 reimbursement for not less than seventy-five percent of such expenses;
32 and

33 4. two thousand twenty-one and thereafter the state shall provide
34 reimbursement for the full amount of such expenses.

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

39 (l) to present findings and make recommendations for consideration by
40 the indigent legal services board established pursuant to section eight
41 hundred thirty-three of this article; ~~and~~

42 (m) to execute decisions of the indigent legal services board estab-
43 lished pursuant to section eight hundred thirty-three of this article,
44 including the distribution of funds~~[-]~~; and

45 (n) to adopt, promulgate, amend or rescind rules and regulations to
46 carry out the provisions of this section, including to (i) ensure the
47 presence of counsel at the first appearance of any eligible defendant
48 charged with a crime, (ii) establish caseload/workload regulations for
49 attorneys providing mandated representation that allow for meaningful
50 and effective assistance of counsel; assess statewide caseloads and
51 allocate monies to counties and cities consistent with section seven
52 hundred twenty-two-g of the county law, and (iii) improve the quality of
53 mandated representation.

54 § 4. Subdivision 3 of section 98-b of the state finance law is amended
55 by adding three new paragraphs (e), (f) and (g) to read as follows:

1 (e) The office of indigent legal services may expend a portion of the
2 funds available in such fund to provide for caseload relief in accord-
3 ance with section seven hundred twenty-two-g of the county law, up to an
4 annual amount of sixty-seven million dollars.

5 (f) For the purpose of caseload relief and pursuant to seven hundred
6 twenty-two-g of the county law, an annual amount of sixty-seven million
7 dollars shall be made available to every county, except the city of New
8 York, Suffolk county, Washington county, Ontario county, Onondaga coun-
9 ty, and Schuyler county from such fund for the provision of services
10 pursuant to section seven hundred twenty-two-g of the county law;
11 provided that every county, except the city of New York continue to
12 provide at minimum the aggregate amount of funding for public defense
13 services including, but not limited to, the amount of funding for
14 contractors of public defense services and individual defense attorneys,
15 that it provided, pursuant to article eighteen-B of the county law
16 during its two thousand seventeen--two thousand eighteen fiscal year.

17 (g) Funds to pay for caseloads exceeding this formula shall be reim-
18 bursed by the state to the county or city providing such services,
19 provided, however, that in the state fiscal year:

20 (i) beginning April first, two thousand eighteen, the state shall
21 provide reimbursement for not less than twenty-five percent of such
22 expenses;

23 (ii) on April first, two thousand nineteen, the state shall provide
24 reimbursement for not less than fifty percent of the expenses;

25 (iii) on April first, two thousand twenty, the state shall provide
26 reimbursement for not less than seventy-five percent of such expenses;
27 and

28 (iv) in two thousand twenty-one and thereafter the state shall provide
29 reimbursement for the full amount of such expenses.

30 § 5. This act shall take effect immediately.