

STATE OF NEW YORK

4032--A

2017-2018 Regular Sessions

IN SENATE

February 2, 2017

Introduced by Sens. BAILEY, COMRIE, HAMILTON, MONTGOMERY, PARKER, PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, 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.

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

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1 In 2009, the New York state legislature passed and Governor Paterson
2 signed into law "case caps" for public defenders in New York City.
3 Through the Office of Court Administration, the legislature supplemented
4 NYC's indigent defense budget to effectuate a judiciary rule which
5 limited annual criminal defense attorney caseloads to 400 misdemeanors
6 or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed
7 caseloads.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 2. beginning April first, two thousand nineteen, the state shall
33 provide reimbursement for not less than fifty percent of the expenses;

34 3. beginning April first, two thousand twenty, the state shall provide
35 reimbursement for not less than seventy-five percent of such expenses;
36 and

37 4. beginning in two thousand twenty-one and thereafter the state shall
38 provide reimbursement for the full amount of such expenses.

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

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

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

49 (n) to adopt, promulgate, amend or rescind rules and regulations to
50 carry out the provisions of this section, including to (i) ensure the
51 presence of counsel at the first appearance of any eligible defendant
52 charged with a crime, (ii) establish caseload/workload regulations for
53 attorneys providing mandated representation that allow for meaningful
54 and effective assistance of counsel; assess statewide caseloads and
55 allocate monies to counties and cities consistent with section seven

1 hundred twenty-two-g of the county law, and (iii) improve the quality of
2 mandated representation.

3 § 4. Paragraph (b) of subdivision 4 of section 832 of the executive
4 law, as added by section 12 of part VVV of chapter 59 of the laws of
5 2017, is amended to read as follows:

6 (b) Caseload relief. Develop and implement a written plan that estab-
7 lishes numerical caseload/workload standards for each provider of
8 constitutionally mandated publicly funded representation in criminal
9 cases for people who are unable to afford counsel, provided that annual
10 individual numerical caseload/workload standards may not exceed three
11 hundred sixty-seven misdemeanors or one hundred thirty-eight felonies,
12 with each felony counting as two and sixty-six hundredths misdemeanors
13 in mixed caseloads.

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

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

20 (f) For the purpose of caseload relief and pursuant to seven hundred
21 twenty-two-g of the county law, an annual amount of sixty-seven million
22 dollars shall be made available to every county, except the city of New
23 York, Suffolk county, Washington county, Ontario county, Onondaga coun-
24 ty, and Schuyler county from such fund for the provision of services
25 pursuant to section seven hundred twenty-two-g of the county law;
26 provided that every county, except the city of New York continue to
27 provide at minimum the aggregate amount of funding for public defense
28 services including, but not limited to, the amount of funding for
29 contractors of public defense services and individual defense attorneys,
30 that it provided, pursuant to article eighteen-B of the county law
31 during its two thousand seventeen--two thousand eighteen fiscal year.

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

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

38 (ii) beginning April first, two thousand nineteen, the state shall
39 provide reimbursement for not less than fifty percent of the expenses;

40 (iii) beginning April first, two thousand twenty, the state shall
41 provide reimbursement for not less than seventy-five percent of such
42 expenses; and

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

45 § 6. This act shall take effect immediately.