

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS SAVAGE, LORIGO, LOUGHRAN, GRANT, RATH,
HARDWICK, BURKE & MILLER-WILLIAMS**

RE: Asking Governor Andrew M. Cuomo to Sign into Law S.8114/A.10706 – State Assumption of Costs for Indigent Legal Defense Services

WHEREAS, it is a fundamental right of all persons in the United States to be represented by counsel in all criminal prosecutions; and

WHEREAS, in the case of Gideon vs. Wainwright, the United States Supreme Court ruled that persons who were unable to afford counsel had a constitutional right to be defended by an appointed attorney paid by the State; and

WHEREAS, in New York State, these costs for so-called “indigent defense” have become significant costs, borne almost entirely by the County governments; and

WHEREAS, in 2016, Erie County will pay \$12,024,312 for indigent defense; and

WHEREAS, the New York State Senate and Assembly recently adopted legislation (S.8114/A.10706) – the “Public Defense Mandate Relief Act” – which will transfer the financial responsibility for public defense from Counties to the State over a phased-in seven-year period starting in 2017, and culminating in a full State assumption of costs in 2023 via a reimbursement mechanism; and

WHEREAS, the legislation will also authorize the New York State Office of Indigent Legal Services to establish and uphold standards to ensure that persons accused of crimes are given effective legal representation when they cannot afford to hire a private counsel; and

WHEREAS, the Public Defense Mandate Relief Act will give the New York State Office of Indigent Legal Services the authority “to adopt, promulgate, amend or rescind rules and regulations to carry out the provisions of [Executive Law 832], 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;” and

WHEREAS, requiring Counties to finance public defense services, particularly in the wake of the Hurrell-Harring lawsuit settlement, imposes a significant financial burden on Counties which are already struggling with lagging sales tax revenues and subject to the State-imposed property tax cap.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature strongly urges Governor Andrew M. Cuomo to sign into law the Public Defense Mandate Relief Act (S.8114/A.10706) when it is delivered to him, fulfilling the State's obligation for public defense, acknowledging the Hurrell-Harring settlement, and helping relieve the taxpayers of Erie County of the growing financial burden of this State mandate; and be it further

RESOLVED, that a certified copy of this resolution be sent to Governor Andrew M. Cuomo, Senate Majority Leader John Flanagan, Assembly Speaker Carl Heastie, the Erie County delegation to the New York State Legislature, the New York State Office of Indigent Legal Services, the New York State Defenders Association, the New York Civil Liberties Union (NYCLU), the Chief Defenders Association of New York, the New York State Association of Counties (NYSAC), the Legal Aid Bureau of Buffalo and Erie County, the Assigned Counsel Program of the Erie County Bar Association, and the Erie County Department of Law.

FISCAL IMPACT: None for resolution.

8114

IN SENATE

June 13, 2016

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

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
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.

LBD15873-01-6

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

31 (B) APRIL FIRST, TWO THOUSAND EIGHTEEN, THE STATE SHALL PROVIDE
32 REIMBURSEMENT FOR NOT LESS THAN THIRTY-FIVE PERCENT OF SUCH EXPENSES;
33 AND

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

36 (D) APRIL FIRST, TWO THOUSAND TWENTY, THE STATE SHALL PROVIDE
37 REIMBURSEMENT FOR NOT LESS THAN FIFTY-FIVE PERCENT OF SUCH EXPENSES; AND

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

40 (F) APRIL FIRST, TWO THOUSAND TWENTY-TWO, THE STATE SHALL PROVIDE
41 REIMBURSEMENT FOR NOT LESS THAN SEVENTY-FIVE PERCENT OF SUCH EXPENSES;
42 AND

43 (G) EVERY YEAR THEREAFTER, THE STATE SHALL PROVIDE REIMBURSEMENT FOR
44 THE FULL AMOUNT OF SUCH EXPENSES.

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

47 (N) TO ADOPT, PROMULGATE, AMEND OR RESCIND RULES AND REGULATIONS TO
48 CARRY OUT THE PROVISIONS OF THIS SECTION, INCLUDING TO (I) ENSURE THE
49 PRESENCE OF COUNSEL AT THE FIRST APPEARANCE OF ANY ELIGIBLE DEFENDANT
50 CHARGED WITH A CRIME, (II) ESTABLISH CASELOAD/WORKLOAD REGULATIONS FOR
51 ATTORNEYS PROVIDING MANDATED REPRESENTATION, AND (III) IMPROVE THE QUAL-
52 ITY OF MANDATED REPRESENTATION.

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

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

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

7 (b) [An] IN ADDITION TO THE AMOUNTS PAID TO EACH COUNTY AND THE CITY
8 OF NEW YORK PURSUANT TO SECTION SEVEN HUNDRED TWENTY-TWO-E OF THE COUNTY
9 LAW AND IN ACCORDANCE WITH SECTIONS EIGHT HUNDRED THIRTY-TWO AND EIGHT
10 HUNDRED THIRTY-THREE OF THE EXECUTIVE LAW AN annual amount [of forty
11 million dollars shall be made available to the city of New York from
12 such fund for the provision of services pursuant to article eighteen-B
13 of the county law; provided that the city of New York shall continue to
14 provide at minimum the aggregate amount of funding for public defense
15 services including, but not limited to, the amount of funding for
16 contractors of public defense services and individual defense attorneys,
17 that it provided, pursuant to article eighteen-B of the county law
18 during its two thousand nine--two thousand ten fiscal year] SHALL BE
19 PAID TO SUCH COUNTIES AND CITY EQUAL TO THE AMOUNT PAID FROM SUCH FUND
20 TO SUCH COUNTIES AND CITY IN MARCH TWO THOUSAND TEN.

21 (c) [Within the first fifteen days of March two thousand eleven, each
22 county other than a county wholly contained within the city of New York,
23 shall receive ninety percent of the amount paid to such county in March
24 two thousand ten. Within the first fifteen days of March two thousand
25 twelve, each county other than a county wholly contained within the city
26 of New York shall receive seventy-five percent of the amount paid to
27 such county in March two thousand ten. Within the first fifteen days of
28 March two thousand thirteen, each county other than a county wholly
29 contained within the city of New York shall receive fifty percent of the
30 amount paid to such county in March two thousand ten. Within the first
31 fifteen days of March two thousand fourteen, each county other than a
32 county wholly contained within the city of New York shall receive twen-
33 ty-five percent of the amount paid to such county in March two thousand
34 ten. For all state fiscal years following the two thousand thirteen--two
35 thousand fourteen fiscal year, there shall be no required annual
36 payments pursuant to this paragraph. Notwithstanding the provisions of
37 this paragraph, for each of the four required payments made to counties
38 within the first fifteen days of March two thousand eleven, two thousand
39 twelve, two thousand thirteen and two thousand fourteen, Hamilton and
40 Orleans counties shall receive such percentage payments based on the
41 amounts that each county would have received in March two thousand ten
42 had it satisfied the maintenance of effort requirement set forth in
43 paragraph (c) of subdivision four of this section in effect on such
44 date.

45 (d)] Remaining amounts within such fund, after accounting for annual
46 payments required in paragraphs (a)[,] AND (b) [and (c)] of this subdivi-
47 sion and subparagraph (iii) of paragraph (a) of subdivision two of
48 this section shall be distributed in accordance with sections eight
49 hundred thirty-two and eight hundred thirty-three of the executive law.

50 S 5. This act shall take effect April 1, 2017.

10706

IN ASSEMBLY

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fahy) --
read once and referred to the Committee on Codes

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12 to indigent persons accused of a crime by requiring each county
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22 The agreement acknowledges that the Office of Indigent Legal
23 Services and the Indigent Legal Services Board are authorized "to monitor
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50 S 5. This act shall take effect April 1, 2017.