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S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 9, 2009

Introduced by M. of A. LENTOL, GOTTFRIED, PAULIN, CAHILL, CLARK, CANESTRARI, ENGLEBRIGHT, JACOBS, DINOWITZ, POWELL, PEOPLES, KAVANAGH, ROSENTHAL, BENEDETTO, WEINSTEIN, JOHN, SCHIMEL, LANCMAN, O'DONNELL, LATIMER -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, AUBRY, BACALLES, BENJAMIN, BING, BOYLAND, BRADLEY, BRENNAN, BRODSKY, BROOK-KRASNY, CYMBROWITZ, DenDEKKER, ESPAILLAT, FARRELL, FIELDS, GANTT, GIGLIO, GLICK, GORDON, HEASTIE, HIKIND, HOOPER, HOYT, JAFFEE, JEFFRIES, KELLNER, LAVINE, LIFTON, V. LOPEZ, LUPARDO, MAGEE, MAGNARELLI, MAISEL, MARKEY, McENENY, MILLMAN, MORELLE, ORTIZ, PARMENT, PERRY, PHEFFER, PRETLOW, REILLY, N. RIVERA, P. RIVERA, ROBINSON, SCARBOROUGH, SCHROEDER, SCOZZAFAVA, SWEENEY, THIELE, TITONE, TITUS, TOWNS, TOWNSEND, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, the county law, and the state finance law, in relation to establishing the public defense act of 2009; and to repeal articles 18-A and 18-B of the county law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The judiciary law is amended by adding a new article 15-A
2 to read as follows:

3 ARTICLE 15-A

4 PUBLIC DEFENSE ACT OF 2009

5 SECTION 499-A. SHORT TITLE.

6 499-B. PURPOSES.

7 499-C. DEFINITIONS.

8 499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED.

9 499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICA-
10 TIONS.

11 499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION
12 OF CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPEN-
13 SATION.

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

LBD11952-03-9

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1 499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND
2 RESPONSIBILITIES.
3 499-H. STATE DEFENDER.
4 499-I. ASSISTANCE BY STATE OFFICES, DEPARTMENTS, BOARDS, DIVI-
5 SIONS AND COMMISSIONS AND FROM LOCALITIES AND PUBLIC
6 DEFENSE PROVIDERS.
7 499-J. INDEPENDENCE; FISCAL DISCIPLINE.
8 499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION.
9 499-L. ENFORCEMENT OF STANDARDS; PROHIBITION.
10 499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE
11 SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION.
12 S 499-A. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AS AND MAY BE CITED
13 AS THE "PUBLIC DEFENSE ACT OF 2009".
14 S 499-B. PURPOSES. THE PURPOSES OF THIS ARTICLE ARE TO: 1. IMPROVE THE
15 QUALITY OF PUBLIC DEFENSE SERVICES STATEWIDE BY IMPLEMENTING STATE OVER-
16 SIGHT, FUNDING AND CONTROL OF PUBLIC DEFENSE SERVICES, WHILE PROVIDING
17 FOR THE PLANNING AND IMPLEMENTATION OF THE STATE'S ASSUMPTION OF THESE
18 RESPONSIBILITIES IN A MANNER THAT IS RESPONSIVE TO REGIONAL AND COMMUNI-
19 TY NEEDS;
20 2. ENSURE THAT PUBLIC DEFENSE REPRESENTATION IS PROVIDED WITHIN A
21 TRULY INDEPENDENT ATMOSPHERE FREE FROM POLITICAL INFLUENCE AND CONFLICTS
22 OF INTEREST;
23 3. LIMIT THE FISCAL BURDEN ON LOCALITIES BY IMPLEMENTING FULL STATE
24 ADMINISTRATION AND FUNDING OF PUBLIC DEFENSE SERVICES SUBJECT TO AN
25 EQUITABLE FIXED ANNUAL OFFSET CONTRIBUTION;
26 4. GUARANTEE THAT STATE AND LOCAL FUNDS FOR PUBLIC DEFENSE SERVICES
27 ARE MANAGED IN AN EFFICIENT AND COST EFFECTIVE MANNER WITHOUT SACRIFIC-
28 ING QUALITY OF REPRESENTATION;
29 5. ESTABLISH A PUBLIC DEFENSE COMMISSION AS A PUBLIC BENEFIT CORPO-
30 RATION RESPONSIBLE FOR OVERSEEING PUBLIC DEFENSE SERVICES AND PLANNING
31 AND IMPLEMENTING STATE ADMINISTRATION OF PUBLIC DEFENSE SERVICES
32 THROUGHOUT THE STATE; ENSURING THAT SUCH SERVICES ARE DELIVERED BY QUAL-
33 IFIED AND COMPETENT ATTORNEYS IN A MANNER THAT IS FAIR, EFFECTIVE AND
34 UNIFORM; AND DEVELOPING POLICIES, PROCEDURES AND STANDARDS FOR THE
35 DELIVERY OF SUCH SERVICES; AND
36 6. ENHANCE OVERSIGHT OF THE DELIVERY OF PUBLIC DEFENSE SERVICES BY
37 GENERATING RELIABLE STATISTICAL INFORMATION AND DATA NEEDED TO EVALUATE
38 THE SERVICES PROVIDED AND FUNDS EXPENDED.
39 S 499-C. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE: 1. "CLIENT" MEANS
40 ANY PERSON WHO RECEIVES OR HAS RECEIVED PUBLIC DEFENSE SERVICES.
41 2. "CLIENT COMMUNITY" MEANS CLIENTS, THEIR FAMILIES, LOCAL NEIGHBOR-
42 HOODS IN WHICH A SIGNIFICANT NUMBER OF CLIENTS LIVE AND ORGANIZATIONS
43 DEDICATED TO PROVIDING SUPPORT OR ADVOCACY TO CLIENTS, THEIR FAMILIES
44 AND LOCAL NEIGHBORHOODS.
45 3. "COMMISSION" MEANS THE THIRTEEN MEMBERS COMPRISING THE PUBLIC
46 DEFENSE COMMISSION.
47 4. "ELIGIBLE PERSON" MEANS ANY PERSON ELIGIBLE TO RECEIVE PUBLIC
48 DEFENSE SERVICES.
49 5. "LOCALITY" MEANS ANY REGION IN NEW YORK, INCLUDING A COUNTY, A PART
50 OF A COUNTY OR A GROUP OF COUNTIES OR PARTS OF COUNTIES EXCEPT THAT
51 WITHIN A COUNTY IN THE CITY OF NEW YORK SUCH TERM SHALL MEAN THE CITY OF
52 NEW YORK.
53 6. "PUBLIC DEFENSE SERVICES" MEANS PUBLICLY-FINANCED LEGAL REPRESEN-

54 TATION, INCLUDING THE SERVICES OF ATTORNEYS AND/OR ALL INVESTIGATIVE AND
55 NECESSARY ANCILLARY SERVICES PROVIDED TO PERSONS UNABLE TO AFFORD THEM
56 AND SUSPECTED OF, ACCUSED OF, CHARGED WITH, OR CONVICTED OF, COMMITTING
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1 A FELONY, MISDEMEANOR, OR THE BREACH OF ANY LAW OF THIS STATE OR OF ANY
2 LAW, LOCAL LAW OR ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE FOR
3 WHICH A SENTENCE TO A TERM OF IMPRISONMENT IS AUTHORIZED UPON
4 CONVICTION THEREOF, INCLUDING REPRESENTATION AT THE PRETRIAL, TRIAL,
5 APPELLATE AND POST-CONVICTION STAGES IN CRIMINAL CASES, OR ENTITLED TO
6 REPRESENTATION UNDER SECTION TWO HUNDRED SIXTY-TWO OF THE FAMILY COURT
7 ACT OR OTHERWISE ENTITLED TO PUBLIC REPRESENTATION IN FAMILY COURT,
8 SUPREME COURT, SURROGATE'S COURT, PAROLE PROCEEDINGS AND RELATED APPEALS
9 UNDER THE EXECUTIVE LAW, IN CLASSIFICATION PROCEEDINGS UNDER ARTICLE
10 SIX-C OF THE CORRECTION LAW AND RELATED APPEALS AND IN ALL OTHER CASES
11 WHERE COUNSEL IS OR MAY BE PROVIDED FOR BY LAW.

12 7. "PUBLIC DEFENSE SERVICE PROVIDER" OR "SERVICE PROVIDER" MEANS AN
13 ENTITY OR INDIVIDUAL AUTHORIZED BY LAW TO PROVIDE PUBLIC DEFENSE
14 SERVICES.

15 S 499-D. PUBLIC DEFENSE COMMISSION ESTABLISHED. 1. THERE IS HEREBY
16 ESTABLISHED THE NEW YORK STATE PUBLIC DEFENSE COMMISSION, A BODY CORPO-
17 RATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

18 2. THE COMMISSION SHALL RECEIVE AN APPROPRIATION FROM THE INDIGENT
19 LEGAL SERVICES FUND, ESTABLISHED PURSUANT TO SECTION NINETY-EIGHT-B OF
20 THE STATE FINANCE LAW, IN THE AMOUNT OF THREE MILLION DOLLARS FOR FISCAL
21 YEAR TWO THOUSAND NINE-TWO THOUSAND TEN TO ESTABLISH AND STAFF AN
22 OFFICE, ADAPT THE PUBLIC DEFENSE CASE MANAGEMENT SYSTEM, CONTRACT AND
23 CONSULT WITH COMPETENT EVALUATORS, EXPERTS, AND THE NEW YORK STATE
24 DEFENDERS ASSOCIATION PUBLIC DEFENSE BACKUP CENTER, BEGIN THE ESTABLISH-
25 MENT OF APPROPRIATE PRIVATE-PUBLIC PARTNERSHIPS AND DEVELOP A WORK PLAN
26 FOR AND OTHERWISE CARRY OUT ITS GENERAL POWERS, DUTIES AND RESPONSIBIL-
27 ITIES AS DEFINED IN THIS ARTICLE.

28 3. THE COMMISSION SHALL OPERATE INDEPENDENTLY FOR THE IMPROVEMENT OF
29 THE PUBLIC DEFENSE SYSTEM AND SHALL BE FREE FROM POLITICAL INTERFERENCE.

30 4. THE BUDGET FOR THE COMMISSION SHALL INCLUDE, BUT NOT BE LIMITED TO,
31 THE SALARIES OF ALL COMMISSION PERSONNEL, AN ALLOCATION FOR OFFICE
32 EXPENSES, FURNITURE, COMPUTERS, LIBRARY, AND AN ALLOCATION FOR SUCH
33 ADDITIONAL ITEMS AS MAY BE NECESSARY FOR THE COMMISSION TO PERFORM ITS
34 FUNCTIONS PURSUANT TO THIS ARTICLE.

35 5. THE COMMISSION WILL BE PERFORMING AN ESSENTIAL GOVERNMENTAL FUNC-
36 TION IN THE EXERCISE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE AND
37 THE COMMISSION SHALL NOT BE REQUIRED TO PAY TAXES OR ASSESSMENTS UPON
38 ANY OF THE PROPERTY ACQUIRED BY IT OR UNDER ITS JURISDICTION AND
39 CONTROL.

40 6. ALL CONTRIBUTIONS MADE TO THE COMMISSION WHETHER BY GIFT, DEVISE,
41 GRANT, DONATION OR BEQUEST SHALL QUALIFY AS DEDUCTIONS IN COMPUTING THE
42 NET TAXABLE INCOME OF THE DONOR FOR THE PURPOSE OF INCOME TAX IMPOSED BY
43 THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

44 7. THE COMMISSION SHALL PROTECT THE CONFIDENCES AND SECRETS OF
45 CLIENTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO
46 RECORD OR REPORT SHALL BE DEEMED DEFICIENT BECAUSE OF THE OMISSION OF
47 INFORMATION, THE PROVISION OF WHICH WOULD RESULT IN THE DISCLOSURE OF
48 SUCH CONFIDENCES OR SECRETS, OR WOULD OTHERWISE COMPROMISE THE INTEREST
49 OF ANY CLIENT.

50 8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
51 COMMISSION SHALL BE EXEMPT FROM THE APPLICATION OF ANY PROVISION OF
52 ARTICLES SIX AND SEVEN OF THE PUBLIC OFFICERS LAW.

53 S 499-E. PUBLIC DEFENSE COMMISSION; APPOINTMENTS AND QUALIFICATIONS.

54 1. THE COMMISSION SHALL BE COMPOSED OF THIRTEEN MEMBERS WHO SHALL BE

55 SELECTED WITH REGARD FOR THE GEOGRAPHIC, RACIAL, ETHNIC AND GENDER MAKE-
56 UP OF THE STATE AND THE CULTURAL DIVERSITY OF THE STATE'S PUBLIC DEFENSE
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1 CLIENTS. A PERSON APPOINTED TO THE COMMISSION MUST HAVE A DEMONSTRABLE
2 COMMITMENT TO QUALITY REPRESENTATION OF LOWER INCOME PEOPLE, TO IMPROV-
3 ING THE PUBLIC DEFENSE SYSTEM AND TO THE PRINCIPLE OF INDEPENDENCE OF
4 THE DEFENSE FUNCTION. WHILE SERVING ON THE COMMISSION, NO MEMBER OF THE
5 COMMISSION SHALL BE A JUDGE, PROSECUTOR, PUBLIC DEFENSE PROVIDER, LAW
6 ENFORCEMENT OFFICER, COUNTY ATTORNEY, ATTORNEY GENERAL, UNITED STATES
7 ATTORNEY, OR EMPLOYEE THEREOF, OR A FULL TIME EMPLOYEE OF THE STATE OR
8 ANY POLITICAL SUBDIVISION, OR OF ANY BOARD, COMMISSION, AGENCY OR
9 AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

10 2. THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED BY THE GOVERNOR AS
11 FOLLOWS:

12 A. THREE ATTORNEYS WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE
13 QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOMINEES SUBMITTED BY THE
14 CHIEF JUDGE OF THE NEW YORK STATE COURT OF APPEALS AS FOLLOWS:

15 (I) ONE FROM NOT LESS THAN THREE NOMINEES WITH SUBSTANTIAL EXPERIENCE
16 IN THE HANDLING OF CRIMINAL TRIALS OR APPEALS;

17 (II) ONE FROM NOT LESS THAN THREE NOMINEES WITH SUBSTANTIAL EXPERIENCE
18 IN THE HANDLING OF FAMILY-RELATED TRIALS OR APPEALS; AND

19 (III) ONE FROM NOT LESS THAN THREE NOMINEES DRAWN FROM A LIST OF INDI-
20 VIDUALS RECOMMENDED TO THE CHIEF JUDGE BY THE DEANS OF THE STATE'S LAW
21 SCHOOLS;

22 B. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
23 TY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES
24 SUBMITTED BY THE TEMPORARY PRESIDENT OF THE STATE SENATE;

25 C. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
26 TY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES
27 SUBMITTED BY THE SPEAKER OF THE STATE ASSEMBLY;

28 D. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
29 TY OF PUBLIC DEFENSE REPRESENTATION WHO HAS SUBSTANTIAL EXPERIENCE IN
30 THE DELIVERY OF PUBLIC DEFENSE SERVICES FROM NOT LESS THAN THREE NOMI-
31 NEES SUBMITTED BY THE MINORITY LEADER OF THE STATE SENATE;

32 E. ONE ATTORNEY WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALI-
33 TY OF PUBLIC DEFENSE REPRESENTATION WHO HAS SUBSTANTIAL EXPERIENCE IN
34 ADULT RESPONDENT REPRESENTATION IN FAMILY COURT FROM NOT LESS THAN THREE
35 NOMINEES SUBMITTED BY THE MINORITY LEADER OF THE STATE ASSEMBLY;

36 F. ONE ATTORNEY IN PRIVATE PRACTICE WITH A DEMONSTRABLE COMMITMENT TO
37 IMPROVING THE QUALITY OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS
38 THAN THREE NOMINEES SUBMITTED BY THE NEW YORK STATE BAR ASSOCIATION;

39 G. ONE PERSON WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY
40 OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES
41 SUBMITTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION;

42 H. ONE PERSON WITH A DEMONSTRABLE COMMITMENT TO IMPROVING THE QUALITY
43 OF PUBLIC DEFENSE REPRESENTATION FROM NOT LESS THAN THREE NOMINEES
44 SUBMITTED BY THE NEW YORK STATE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS;

45 I. ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON
46 BEHALF OF A RACIAL MINORITY POPULATION IN NEW YORK FROM NOT LESS THAN
47 THREE NOMINEES SUBMITTED BY THE NAACP LEGAL DEFENSE AND EDUCATIONAL
48 FUND;

49 J. ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON
50 BEHALF OF A RACIAL MINORITY POPULATION IN NEW YORK FROM NOT LESS THAN
51 THREE NOMINEES SUBMITTED BY THE LATINO JUSTICE PUERTO RICAN LEGAL
52 DEFENSE AND EDUCATION FUND; AND

53 K. ONE PERSON WITH EXPERIENCE AS A CONSUMER OF PUBLIC DEFENSE SERVICES
54 WHO, HAVING BEEN EXONERATED OR HAVING PAID HIS OR HER DEBT TO SOCIETY BY
55 SERVICE OF A SENTENCE, HAS DEMONSTRATED A COMMITMENT TO THE IMPROVEMENT

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1 OF LEGAL SERVICES FOR THOSE UNABLE TO AFFORD COUNSEL FROM NOT LESS THAN
2 THREE NOMINEES SUBMITTED BY THE FORTUNE SOCIETY.

3 3. THE APPOINTMENT OF MEMBERS OF THE COMMISSION SHALL BE COMPLETED
4 WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE.

5 S 499-F. PUBLIC DEFENSE COMMISSION; TERMS OF OFFICE; DESIGNATION OF
6 CHAIRPERSON; RE-APPOINTMENT; VACANCIES AND COMPENSATION. 1. MEMBERS OF
7 THE COMMISSION SHALL SERVE TERMS OF FOUR YEARS; PROVIDED, HOWEVER, THAT
8 THE MEMBERS INITIALLY APPOINTED SHALL SERVE THE FOLLOWING TERMS: A. THE
9 THREE MEMBERS APPOINTED PURSUANT TO PARAGRAPHS I, J, AND K OF SUBDIVI-
10 SION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE, ONE
11 YEAR; B. THE THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPHS (II) AND
12 (III) OF PARAGRAPH A AND PARAGRAPH F OF SUBDIVISION TWO OF SECTION FOUR
13 HUNDRED NINETY-NINE-E OF THIS ARTICLE, TWO YEARS; C. THE THREE MEMBERS
14 APPOINTED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH A AND PARAGRAPHS G
15 AND H OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS
16 ARTICLE, THREE YEARS; AND D. THE FOUR MEMBERS APPOINTED PURSUANT TO
17 PARAGRAPHS B, C, D AND E OF SUBDIVISION TWO OF SECTION FOUR HUNDRED
18 NINETY-NINE-E OF THIS ARTICLE, FOUR YEARS.

19 2. MEMBERS OF THE COMMISSION SHALL SELECT BY MAJORITY VOTE A CHAIR-
20 PERSON FROM AMONG THEIR RANKS FOR A TERM OF TWO YEARS.

21 3. MEMBERS OF THE COMMISSION MAY BE RE-APPOINTED TO ADDITIONAL TERMS
22 AND SHALL SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED.

23 4. VACANCIES ON THE COMMISSION SHALL BE FILLED PROMPTLY AND FOR THE
24 REMAINDER OF THE TERM IN THE MANNER PROVIDED FOR BY THE ORIGINAL
25 APPOINTMENT.

26 5. MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT PAY BUT SHALL BE
27 REIMBURSED FOR THEIR REASONABLE, ACTUAL AND NECESSARY EXPENSES INCURRED
28 IN THE PERFORMANCE OF THEIR DUTIES.

29 S 499-G. PUBLIC DEFENSE COMMISSION; GENERAL POWERS, DUTIES AND RESPON-
30 SIBILITIES. THE COMMISSION SHALL HAVE THE POWER, DUTY AND RESPONSIBIL-
31 ITY:

32 1. COMMENCING APRIL FIRST, TWO THOUSAND TWELVE, AND IN ACCORDANCE WITH
33 THE STRATEGIC PLAN PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS
34 SECTION, TO OVERSEE AND ADMINISTER ALL PUBLIC DEFENSE SERVICES IN THE
35 STATE THROUGH THE COMBINED APPLICATION OF SUCH STATE FUNDS AS MAY BE
36 APPROPRIATED THEREFOR AND FIXED ANNUAL LOCAL OFFSET CONTRIBUTION MONIES
37 AS DESCRIBED IN SECTION FOUR HUNDRED NINETY-NINE-M OF THIS ARTICLE,
38 INCLUDING BUT NOT LIMITED TO MONIES FROM THE INDIGENT LEGAL SERVICES
39 FUND;

40 2. TO ENGAGE IN AN EVALUATION OF EXISTING PUBLIC DEFENSE SYSTEMS AND
41 SERVICE PROVIDERS IN THE STATE BASED ON THE "STANDARDS FOR PROVIDING
42 MANDATED REPRESENTATION" AS ADOPTED BY THE NEW YORK STATE BAR ASSOCI-
43 ATION'S HOUSE OF DELEGATES AND THE "STANDARDS FOR PROVIDING CONSTITU-
44 TIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK
45 STATE" AS ADOPTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION'S BOARD OF
46 DIRECTORS, AND SUCH OTHER STATE AND NATIONAL STANDARDS AS THE COMMISSION
47 DEEMS APPROPRIATE, AND DEVELOP AND OVERSEE A SELF-EVALUATION PROCESS FOR
48 EXISTING PUBLIC DEFENSE PROVIDERS;

49 3. TO CALCULATE THE COST OF PUBLIC DEFENSE SERVICES, INCLUDING BUT NOT
50 LIMITED TO THE TOTAL ACTUAL COST OF THE CURRENT SYSTEM FOR PROVIDING
51 SUCH SERVICES; THE PROJECTED COST WHEN THE SYSTEM IS SUBJECTED TO MEAN-
52 INGFUL ECONOMIES OF SCALE, REDUCTION OF WASTE, AND ELIMINATION OF DUPLI-
53 CATION; AND THE PROJECTED ADDITIONAL COSTS REQUIRED TO ENSURE COMPLIANCE
54 WITH NATIONAL, ETHICAL AND STATE PROFESSIONAL STANDARDS AND BEST PRAC-
55 TICES;

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1 4. IN CONSULTATION WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO
2 SUBDIVISION EIGHT OF THIS SECTION AND THE FINANCING TRANSITION ADVISORY
3 COUNCIL ESTABLISHED BY SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTI-
4 CLE, TO PROMULGATE A STRATEGIC PLAN FOR THE ADMINISTRATION AND FUNDING
5 OF TRIAL, APPELLATE, FAMILY AND CONFLICT PUBLIC DEFENSE SERVICES
6 THROUGHOUT THE STATE. SUCH PLAN SHALL BE CONSISTENT WITH THE PROVISIONS
7 AND FURTHER THE PURPOSES OF THIS ARTICLE AND SHALL, AT A MINIMUM,
8 PROVIDE FOR: A. THE DESIGNATION OF GEOGRAPHIC REGIONS TO ALLOW FOR THE
9 MORE EFFICIENT AND EFFECTIVE PROVISION OF PUBLIC DEFENSE SERVICES,
10 PROVIDED, HOWEVER, THAT REGIONS ENCOMPASSING MULTIPLE COUNTIES SHALL
11 INCLUDE AT LEAST ONE STAFFED OFFICE IN EACH COUNTY SO AS TO PROVIDE
12 ADEQUATE ACCESS BY CLIENTS TO PUBLIC DEFENSE SERVICES; B. THE AUTHORITY
13 OF THE COMMISSION TO CONTRACT WITH NOT-FOR-PROFIT PUBLIC DEFENSE SERVICE
14 PROVIDERS TO PROVIDE PUBLIC DEFENSE SERVICES TO CLIENTS; AND C. THE
15 AUTHORITY OF THE COMMISSION TO DIRECTLY EMPLOY CRIMINAL DEFENSE ATTOR-
16 NEYS, INVESTIGATORS AND OTHER PROFESSIONAL AND SUPPORT STAFF TO PROVIDE
17 PUBLIC DEFENSE SERVICES TO CLIENTS.

18 5. COMMENCING TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE
19 AND UNTIL MARCH THIRTY-FIRST, TWO THOUSAND TWELVE, WHERE THE COMMISSION
20 DEEMS IT APPROPRIATE, TO ENTER INTO AN AGREEMENT WITH ANY COUNTY THAT
21 SEEKS TO DISCONTINUE ITS PLAN FOR PROVIDING COUNSEL AND RELATED SERVICES
22 PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW IN ACCORDANCE WITH THE
23 PROVISIONS OF SUBDIVISION SIX OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE
24 COUNTY LAW;

25 6. TO ADOPT PROCEDURES FOR THE IMPLEMENTATION OF SUBDIVISION SIX OF
26 SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW;

27 7. TO ESTABLISH THE QUALIFICATIONS, DUTIES AND COMPENSATION FOR THE
28 STAFF OF THE COMMISSION AND APPOINT THE STATE DEFENDER IN ACCORDANCE
29 WITH SECTION FOUR HUNDRED NINETY-NINE-H OF THIS ARTICLE, AND CONFLICT
30 DEFENDER, IF ANY;

31 8. TO ESTABLISH AN ADVISORY COMMITTEE WHOSE MEMBERS SHALL INCLUDE
32 PUBLIC DEFENSE PROVIDERS, REPRESENTATIVES FROM VOLUNTARY ORGANIZATIONS
33 SUCH AS BAR ASSOCIATIONS, OTHER CRIMINAL JUSTICE PROFESSIONALS, AND
34 CLIENT COMMUNITY REPRESENTATIVES TO ADVISE THE COMMISSION ABOUT DEFICI-
35 ENCIENCIES IN PUBLIC DEFENSE SERVICES, POTENTIAL WAYS TO CORRECT THOSE
36 DEFICIENCIES AND THE COMMISSION'S OVERSIGHT AND PLANNING FUNCTIONS;

37 9. SUBJECT TO THE PROHIBITION SET FORTH IN SECTION FOUR HUNDRED NINE-
38 TY-NINE-L OF THIS ARTICLE, TO ESTABLISH AND ENFORCE STATEWIDE STANDARDS
39 FOR PUBLIC DEFENSE SERVICES TO ENSURE THAT QUALITY REPRESENTATION IS
40 PROVIDED BY COMPETENT COUNSEL IN A MANNER THAT IS ZEALOUS, FAIR AND
41 CONSISTENT THROUGHOUT THE STATE. SUCH STANDARDS SHALL REFLECT NATIONAL
42 AND STATE PROFESSIONAL GUIDELINES AND BEST PRACTICES;

43 10. TO PREPARE REPORTS, IN CONJUNCTION WITH THE STATE DEFENDER, WHICH
44 SHALL INCLUDE DETAILED EXPENDITURE AND CASELOAD DATA, DESCRIBE, EVALUATE
45 AND ANALYZE THE NEEDS OF THE PUBLIC DEFENSE SYSTEM AND MAKE RECOMMENDA-
46 TIONS FOR STATUTORY CHANGES, INCLUDING CHANGES IN THE CRIMINAL PROCEDURE
47 LAW, THE PENAL LAW, THE FAMILY COURT ACT, AND RELATED STATUTES AND COURT
48 RULES WHICH MAY BE APPROPRIATE FOR THE IMPROVEMENT OF THE ADMINISTRATION
49 OF JUSTICE, THE REHABILITATION AND RE-ENTRY OF OFFENDERS AND OTHER
50 RELATED OBJECTIVES. COMMENCING IN TWO THOUSAND TEN, ONE SUCH REPORT
51 SHALL BE SUBMITTED ON OR BEFORE THE FIFTEENTH DAY OF SEPTEMBER OF EACH
52 YEAR TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE STATE SENATE, THE
53 SPEAKER OF THE STATE ASSEMBLY, THE RESPECTIVE MINORITY LEADERS OF BOTH
54 HOUSES, THE CHIEF JUDGE OF THE COURT OF APPEALS AND THE CHIEF ADMINIS-
55 TRATIVE JUDGE OF THE UNIFIED COURT SYSTEM; AND

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1 11. TO PROPOSE SUCH AMENDMENTS TO EXISTING LAW AS MAY BE NECESSARY AND
2 APPROPRIATE TO EFFECTUATE THE PROVISIONS AND INTENT OF THIS ARTICLE AND

3 DO ALL THINGS NECESSARY, CONVENIENT OR DESIRABLE, INCLUDING ANCILLARY
4 AND INCIDENTAL ACTIVITIES, TO CARRY OUT ITS PURPOSES AND FOR THE EXER-
5 CISE OF THE POWERS GRANTED IN THIS ARTICLE.

6 S 499-H. STATE DEFENDER. 1. THE STATE DEFENDER APPOINTED PURSUANT TO
7 SUBDIVISION SEVEN OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS ARTICLE
8 SHALL BE AN ATTORNEY, SHALL SERVE AS THE CHIEF EXECUTIVE OFFICER OF THE
9 COMMISSION, SHALL HAVE THE AUTHORITY, IN CONSULTATION WITH THE COMMIS-
10 SION, TO HIRE ATTORNEYS AND OTHER STAFF AND TO TAKE ALL OTHER SUCH
11 ACTIONS AS THE STATE DEFENDER AND THE COMMISSION DEEM NECESSARY TO CARRY
12 OUT THE PURPOSES OF THIS ARTICLE. IN ADDITION, THE STATE DEFENDER SHALL
13 HAVE COMPLETE AUTHORITY, TO THE EXCLUSION OF ALL OTHERS, TO SUPERVISE
14 THE PERSONNEL OF THE COMMISSION EXCEPT FOR THE CONFLICT DEFENDER, IF
15 ANY, AND RELATED CONFLICT STAFF WITH REGARD TO CASE-RELATED MATTERS.

16 2. SALARY. A. THE SALARY OF THE STATE DEFENDER SHALL NOT BE LESS THAN
17 THE COMPENSATION SET FOR THE HIGHEST PAID DISTRICT ATTORNEY IN THE
18 STATE.

19 B. ALL STAFF MEMBERS EMPLOYED BY THE COMMISSION UNDER THIS ARTICLE ARE
20 ENTITLED TO FULL SALARIES, WAGES, BENEFITS AND PROMOTIONAL OPPORTUNITIES
21 AS ACCORDED TO OTHER FULL-TIME STATE EMPLOYEES AND/OR MANAGEMENT CONFI-
22 DENTIAL EMPLOYEES OF THE STATE OF NEW YORK.

23 C. THE COMMISSION SHALL DEVELOP A PLAN TO ESTABLISH FOR PUBLIC DEFENSE
24 PROVIDERS NOT LESS THAN COMPARABLE RATES FOR COMPARABLE POSITIONS WITHIN
25 THE DISTRICT ATTORNEYS OFFICES OR WITHIN THAT OF OTHER GOVERNMENTAL
26 ADVERSARIES.

27 S 499-I. ASSISTANCE BY STATE OFFICES, DEPARTMENTS, BOARDS, DIVISIONS
28 AND COMMISSIONS AND FROM LOCALITIES AND PUBLIC DEFENSE PROVIDERS. AT THE
29 REQUEST OF THE COMMISSION, ALL OTHER STATE OFFICES, DEPARTMENTS, BOARDS,
30 DIVISIONS AND COMMISSIONS, LOCALITIES AND PUBLIC DEFENSE PROVIDERS SHALL
31 RENDER SUCH INFORMATION, ASSISTANCE AND COOPERATION AS SHALL BE WITHIN
32 THEIR LEGAL AUTHORITY IN FURTHERANCE OF THE PURPOSES OF THIS ARTICLE.

33 S 499-J. INDEPENDENCE; FISCAL DISCIPLINE. THE COMMISSION, WHILE MAIN-
34 TAINING THE INDEPENDENCE OF THE DEFENSE FUNCTION, PROTECTING THE CONFI-
35 DENTIALITY OF CLIENT RECORD KEEPING, AND ASSURING THE INTEGRITY OF
36 PROCEDURES SUPPORTING THE REPRESENTATION OF PUBLIC DEFENSE CLIENTS,
37 SHALL, IN CONSULTATION WITH THE DIVISION OF THE BUDGET AND THE FINANCING
38 TRANSITION ADVISORY COUNCIL ESTABLISHED BY SECTION FOUR HUNDRED NINETY-
39 NINE-K OF THIS ARTICLE, ADOPT SUCH POLICIES AND PROCEDURES AS MAY BE
40 NECESSARY AND APPROPRIATE TO ENSURE THAT THE COMMISSION OPERATES WITH A
41 DEGREE OF FISCAL DISCIPLINE AND ACCOUNTABILITY COMPARABLE TO THAT
42 REQUIRED OF EXECUTIVE AND OTHER AGENCIES OF THE STATE.

43 S 499-K. FINANCING TRANSITION ADVISORY COUNCIL TO THE COMMISSION. 1.
44 THERE SHALL BE ESTABLISHED FOR A PERIOD OF THREE YEARS A FINANCING TRAN-
45 SITION ADVISORY COUNCIL CONSISTING OF FIFTEEN MEMBERS TO BE APPOINTED BY
46 THE GOVERNOR TO SERVE AS AN ADVISORY BODY TO THE COMMISSION IN ACCORD-
47 ANCE WITH THE PROVISIONS OF THIS SECTION. EIGHT OF THE MEMBERS SHALL BE
48 APPOINTED ON THE BASIS OF THEIR PROFESSIONAL KNOWLEDGE OF THE WORKINGS
49 OF COUNTY OR CITY GOVERNMENT, THEIR EXPERIENCE AS A COUNTY OFFICIAL IN
50 THE PROVISION OF COUNTY SERVICES, THEIR EXPERIENCE AS AN OFFICIAL OR
51 STAFF MEMBER OF THE NEW YORK STATE ASSOCIATION OF COUNTIES OR OTHERWISE
52 ON THE BASIS OF THEIR ADVOCACY FOR THE RIGHTS AND INTERESTS OF LOCALI-
53 TIES. AT LEAST FIVE OF THE MEMBERS SHALL BE APPOINTED ON THE BASIS OF
54 THEIR EXPERIENCE IN THE ADMINISTRATION OF STATE AID TO LOCALITIES, THEIR
55 PROFESSIONAL KNOWLEDGE OF THE METHODS AND PRACTICES OF THE NEW YORK
56 STATE DIVISION OF THE BUDGET, THEIR EXPERIENCE IN DESIGNING STATE AID
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1 PROGRAMS, THEIR EXPERTISE IN DESIGNING AND CALCULATING REVENUE STREAMS,
2 OR SIMILAR STATE BUDGET EXPERTISE. IN MAKING SUCH APPOINTMENTS, THE
3 GOVERNOR SHALL ENDEAVOR TO INSURE THAT THE OVERALL MEMBERSHIP OF THE

4 COUNCIL ADEQUATELY REFLECTS THE RURAL, SUBURBAN AND URBAN AREAS OF THE
5 STATE.

6 2. MEMBERS OF THE COUNCIL SHALL BE APPOINTED FOR A TERM OF THREE
7 YEARS. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL
8 APPOINTMENTS FOR THE REMAINDER OF ANY UNEXPIRED TERM.

9 3. THE GOVERNOR SHALL DESIGNATE ONE MEMBER OF THE COUNCIL AS ITS CHAIR
10 TO SERVE AS SUCH AT THE PLEASURE OF THE GOVERNOR.

11 4. COUNCIL MEMBERS SHALL NOT RECEIVE COMPENSATION, BUT EACH MEMBER
12 SHALL BE ENTITLED TO RECEIVE HIS OR HER REASONABLE AND NECESSARY
13 EXPENSES INCURRED IN CONNECTION WITH HIS OR HER SERVICES AS A MEMBER
14 WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

15 5. THE COUNCIL SHALL HAVE AN EXECUTIVE SECRETARY DESIGNATED BY THE
16 CHAIR OF THE COMMISSION. THE CHAIR OF THE COMMISSION MAY ALSO ASSIGN
17 SUCH OTHER COMMISSION OFFICERS AND EMPLOYEES AS THE COMMISSION DEEMS
18 PRUDENT TO ASSIST THE COUNCIL IN THE PERFORMANCE OF ITS DUTIES.

19 6. THE COUNCIL SHALL ADVISE AND ASSIST THE COMMISSION IN DEVELOPING
20 POLICIES, PLANS AND PROGRAMS TO CARRY OUT A SEAMLESS TRANSITION FROM A
21 PRIMARILY LOCALLY-FUNDED PUBLIC DEFENSE SYSTEM TO A PRIMARILY
22 STATE-FUNDED PUBLIC DEFENSE SYSTEM ADMINISTERED EXCLUSIVELY BY THE
23 COMMISSION. THE COUNCIL MAY CONSIDER ANY MATTER RELATED TO ENSURING THAT
24 THE LONG-TERM RELATIONSHIP BETWEEN THE STATE AND LOCALITIES REGARDING
25 THE ADMINISTRATION OF PUBLIC DEFENSE SERVICES BE EQUITABLE, TRANSPARENT,
26 FAIR AND PERMANENT AND SHALL ADVISE THE COMMISSION ON ANY SUCH MATTER,
27 INCLUDING BUT NOT LIMITED TO:

28 A. DEVISING A FAIR AND EQUITABLE FORMULA FOR FIXING AND PERMANENTLY
29 CAPPING OFFSET CONTRIBUTIONS BY LOCALITIES TO THE TOTAL COST OF PROVID-
30 ING PUBLIC DEFENSE SERVICES, WHICH FORMULA SHALL, IF ADOPTED BY THE
31 COMMISSION, BECOME EFFECTIVE NO EARLIER THAN TWO THOUSAND TWENTY-TWO.
32 SUCH FORMULA SHOULD, AT A MINIMUM, ADDRESS AND CORRECT CURRENT INEQUI-
33 TIES IN THE COMPARATIVE NET LOCAL EXPENDITURES MADE BY COUNTIES HISTOR-
34 ICALLY AND CURRENTLY IN PROVIDING SERVICES PURSUANT TO ARTICLE EIGH-
35 TEEN-B OF THE COUNTY LAW, AND INCLUDE RECOMMENDATIONS FOR METHODS TO
36 ASSURE COUNTIES OF THE BONA FIDES OF THE STATE IN ITS LONG-TERM CAPPING
37 OF THE FISCAL LIABILITY OF LOCALITIES;

38 B. IDENTIFICATION OF INDIRECT COSTS NOW BORNE BY COUNTIES WHICH SHOULD
39 BECOME STATE CHARGES AT THE TIME OF THE COMMISSION'S ASSUMPTION OF
40 RESPONSIBILITY FOR THE PUBLIC DEFENSE SYSTEM; AND

41 C. SUCH OTHER MATTERS AS THE COUNCIL DEEMS NECESSARY TO CONSIDER OR
42 THE COMMISSION OR THE DIVISION OF THE BUDGET MAY REQUEST THAT IT CONSID-
43 ER.

44 7. THE COUNCIL SHALL MEET AT THE REQUEST OF ITS CHAIR OR THE CHAIR OF
45 THE COMMISSION AS NECESSARY BUT IN NO EVENT LESS THAN FOUR TIMES PER
46 YEAR.

47 S 499-L. ENFORCEMENT OF STANDARDS; PROHIBITION. NOTWITHSTANDING ANY
48 PROVISION OF LAW TO THE CONTRARY, THE COMMISSION SHALL HAVE NO POWER OR
49 AUTHORITY TO IMPOSE, ENFORCE OR OTHERWISE REQUIRE COMPLIANCE BY ANY
50 LOCALITY OR PUBLIC DEFENSE SERVICE PROVIDER WITH ANY STANDARDS, INCLUD-
51 ING BUT NOT LIMITED TO STANDARDS RELATING TO ATTORNEY CASELOADS, ETHICS,
52 PROFESSIONAL TRAINING AND CLIENT ELIGIBILITY FOR PUBLIC DEFENSE
53 SERVICES, UNTIL SUCH TIME AS THE COMMISSION, IN ACCORDANCE WITH SUBDIVI-
54 SION ONE OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS ARTICLE, HAS
55 ASSUMED COMPLETE RESPONSIBILITY FOR THE OVERSIGHT AND ADMINISTRATION OF
56 PUBLIC DEFENSE SERVICES IN THE STATE.

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1 S 499-M. ELIMINATION OF LOCAL RESPONSIBILITY FOR PUBLIC DEFENSE
2 SERVICES; FIXED ANNUAL LOCAL OFFSET CONTRIBUTION. 1. NOTWITHSTANDING ANY
3 PROVISION OF LAW TO THE CONTRARY, EACH LOCALITY IN THE STATE SHALL BE
4 PERMANENTLY RELIEVED OF THE OBLIGATION TO PROVIDE AND ADMINISTER PUBLIC

5 DEFENSE SERVICES, AND THE ADMINISTRATION OF SUCH SERVICES SHALL BECOME
6 SOLELY A STATE OBLIGATION AND CHARGE SUBJECT ONLY TO A FIXED OFFSET
7 CONTRIBUTION TO BE PAID ANNUALLY BY EACH LOCALITY TO THE INDIGENT LEGAL
8 SERVICES FUND TO THE CREDIT OF THE COMMISSION WHICH SHALL ADMINISTER
9 SUCH SERVICES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; 2. THE
10 AGGREGATE OFFSET SHALL BE IN THE AMOUNT OF THREE HUNDRED THIRTY-NINE
11 MILLION DOLLARS AND LOCALITIES SHALL BE OBLIGATED TO PAY, ON AN ANNUAL
12 BASIS, A PERCENTAGE OF THAT AMOUNT BASED ON THE AVERAGE OF THE PERCENT-
13 AGES OF TOTAL NET LOCAL EXPENDITURES MADE BY THEM BETWEEN TWO THOUSAND
14 TWO AND TWO THOUSAND EIGHT AS CALCULATED BY THE OFFICE OF THE STATE
15 COMPTROLLER IN THE ADMINISTRATION OF THE INDIGENT LEGAL SERVICES FUND;
16 PROVIDED HOWEVER, THAT (A) IN ACCORDANCE WITH PARAGRAPH A OF SUBDIVISION
17 SIX OF SECTION FOUR HUNDRED NINETY-NINE-K OF THIS ARTICLE, THE COMMIS-
18 SION MAY, COMMENCING IN TWO THOUSAND TWENTY-TWO, ADOPT AND IMPLEMENT A
19 REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTION AMOUNT FOR EACH LOCALITY
20 BASED ON THE FORMULA RECOMMENDED TO THE COMMISSION BY THE FINANCING
21 TRANSITION ADVISORY COUNCIL; AND (B) THE AGGREGATE AMOUNT OF ANY SUCH
22 REVISED FIXED ANNUAL LOCAL OFFSET CONTRIBUTIONS SHALL NOT EXCEED THREE
23 HUNDRED THIRTY-NINE MILLION DOLLARS.

24 S 2. Section 722 of the county law is amended by adding a new subdivi-
25 sion 6 to read as follows:

26 6. DISCONTINUANCE OF PLAN AT COUNTY REQUEST. (A) REQUEST TO PUBLIC
27 DEFENSE COMMISSION. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE OR
28 ARTICLE EIGHTEEN-A OF THIS CHAPTER TO THE CONTRARY, THE CHIEF ADMINIS-
29 TRATIVE OFFICER OF A COUNTY OTHER THAN A COUNTY WHOLLY CONTAINED WITHIN
30 A CITY MAY, WITH THE APPROVAL OF THE GOVERNING BOARD OF SUCH COUNTY AND
31 IN ACCORDANCE WITH APPLICABLE PROCEDURES PROMULGATED BY THE NEW YORK
32 STATE PUBLIC DEFENSE COMMISSION ESTABLISHED PURSUANT TO ARTICLE
33 FIFTEEN-A OF THE JUDICIARY LAW, REQUEST SUCH COMMISSION TO ASSUME FULL
34 RESPONSIBILITY FOR PROVIDING COUNSEL AND RELATED SERVICES PURSUANT TO
35 THIS ARTICLE TO PERSONS CHARGED WITH A CRIME OR OTHERWISE ENTITLED TO
36 ASSIGNMENT OF COUNSEL PURSUANT TO THIS SECTION. (B) GRANTING OF REQUEST;
37 ASSUMPTION OF RESPONSIBILITIES. WHERE, UPON SUCH TERMS AS MAY BE AGREED
38 TO BY SUCH COUNTY AND THE COMMISSION, RESPONSIBILITY FOR PROVIDING COUN-
39 SEL AND RELATED SERVICES PURSUANT TO THIS SUBDIVISION IS TRANSFERRED TO
40 AND ASSUMED BY THE COMMISSION, SUCH COUNTY SHALL DISCONTINUE THE PLAN
41 PLACED IN OPERATION PURSUANT TO THIS SECTION, WHEREUPON THE COST FOR
42 PROVIDING COUNSEL AND ALL SERVICES OTHER THAN COUNSEL PURSUANT TO
43 SECTION SEVEN HUNDRED TWENTY-TWO-C OF THIS ARTICLE SHALL BECOME SOLELY A
44 COMMISSION CHARGE; PROVIDED, HOWEVER THAT SUCH COUNTY, DURING THE PERIOD
45 OF SUCH DISCONTINUANCE AND IN ACCORDANCE WITH THE TERMS OF SUCH AGREE-
46 MENT, SHALL PAY TO THE INDIGENT LEGAL SERVICES FUND ESTABLISHED PURSUANT
47 TO SECTION NINETY-EIGHT-B OF THE STATE FINANCE LAW AN ANNUAL AGREED UPON
48 DISCONTINUANCE OFFSET CONTRIBUTION TO THE CREDIT OF THE COMMISSION.
49 NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO PRECLUDE THE
50 SUBMISSION OF A JOINT REQUEST TO THE COMMISSION BY TWO OR MORE COUNTIES
51 PURSUANT TO THIS SUBDIVISION.

52 S 3. Articles 18-A and 18-B of the county law are REPEALED.

53 S 4. Subdivisions 3 and 4 of section 98-b of the state finance law,
54 subdivision 3 as amended by section 1 of part H of chapter 56 of the
55 laws of 2004, paragraph (b) of subdivision 3 as amended by section 1 of
56 part G of chapter 56 of the laws of 2005 and subdivision 4 as added by
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1 section 12 of part J of chapter 62 of the laws of 2003, are amended to
2 read as follows:

3 3. (a) As provided in this subdivision, moneys received by the indi-
4 gent legal services fund each calendar year from January first through
5 December thirty-first shall be made available by the state comptroller

6 in the immediately succeeding calendar year to (i) assist [counties and,
7 in the case of a county wholly contained within a city, such city,] THE
8 STATE in providing legal representation [for persons who are financially
9 unable to afford counsel pursuant to article eighteen-B of the county
10 law] PURSUANT TO THE PUBLIC DEFENSE ACT OF 2009; and (ii) assist the
11 state, in funding representation provided by assigned counsel paid in
12 accordance with section thirty-five of the judiciary law. Moneys from
13 the fund shall be distributed at the direction of the state comptroller
14 in accordance with the provisions of this subdivision.

15 (b) (i) Commencing on March thirty-first, two thousand five, moneys
16 from such fund shall first be made available, in the calendar year next
17 succeeding the calendar year in which collected, to reimburse the state
18 for payments, made in the previous calendar year, for assigned counsel
19 paid in accordance with section thirty-five of the judiciary law, up to
20 an annual sum of twenty-five million dollars.

21 (ii) Commencing with the payment on April first, two thousand five or
22 as soon thereafter as practicable, and subsequent quarterly payments
23 thereafter, moneys from such fund shall be available to reimburse the
24 state for providing funding for legal representation in periods and at
25 rates of compensation in effect after January first, two thousand four
26 in accordance with section thirty-five of the judiciary law, in an
27 amount equal to such funding provided during the preceding quarter, less
28 the amount of funding provided during that quarter in accordance with
29 such section at rates of compensation in effect immediately prior to
30 January first, two thousand four, up to but not exceeding six million
31 two hundred fifty thousand dollars per quarter.

32 (c) The balance of moneys received by such fund shall be distributed
33 by the state comptroller, in the calendar year next succeeding the
34 calendar year in which collected, to [counties and, in the case of a
35 county wholly contained within a city, such city, to assist such coun-
36 ties and such city in providing representation pursuant to article eigh-
37 teen-B of the county law. The amount to be made available each year to
38 such counties and such city shall be calculated by the state comptroller
39 as follows:

40 (i) The county executive or chief executive officer of each county or,
41 in the case of a county wholly contained within a city, such city shall,
42 in accordance with subdivision two of section seven hundred twenty-two-f
43 of the county law, certify to the state comptroller, by March first of
44 each year, the total expenditure of local funds by each such county or
45 city, during the period January first through December thirty-first of
46 the previous calendar year, for providing legal representation to
47 persons who were financially unable to afford counsel, pursuant to arti-
48 cle eighteen-B of the county law.

49 (ii) The state comptroller shall then total the amount of local funds
50 expended by all such counties and such city to determine the sum of such
51 moneys expended by all such counties and such city for providing such
52 representation in such calendar year.

53 (iii) The state comptroller shall then calculate the percentage share
54 of the statewide sum of such expenditures for each county and such city
55 for such calendar year.

56 (iv) The state comptroller shall then determine:

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1 (A) the fund amount available to be distributed pursuant to this para-
2 graph, which shall be the amount received by the indigent legal services
3 fund in the immediately preceding calendar year, minus the amount to be
4 distributed to the state under paragraph (b) of this subdivision
5 provided, however, that with respect to the first payment made to coun-
6 ties and such city on March thirty-first, two thousand five, such

7 payment shall be made from the amounts received by the indigent legal
8 services fund in the immediately preceding two calendar years, minus the
9 amount to be distributed to the state under paragraph (b) of this subdi-
10 vision; and

11 (B) the annual payment amount to be paid to each county and such city
12 pursuant to this subdivision, which shall be the product of the percent-
13 age share of statewide local funds expended by each such county and
14 city, as determined pursuant to subparagraph (iii) of this paragraph,
15 multiplied by the fund amount available for distribution, as determined
16 pursuant to clause (A) of this subparagraph.

17 (d) All payments from this account shall be made upon vouchers
18 approved and certified and upon audit and warrant of the state comp-
19 troller. The state comptroller shall, as soon as practicable, make such
20 payments to the state and each county and each city in a lump sum
21 payment] THE PUBLIC DEFENSE COMMISSION CREATED BY THE PUBLIC DEFENSE ACT
22 OF 2009.

23 [4. Maintenance of effort. (a) As used in this section, "local funds"
24 shall mean all funds appropriated or allocated by a county or, in the
25 case of a county wholly contained within a city, such city, for services
26 and expenses in accordance with article eighteen-B of the county law,
27 other than funds received from: (i) the federal government or the state;
28 or (ii) a private source, where such city or county does not have
29 authority or control over the payment of such funds by such private
30 source.

31 (b) State funds received by a county or city pursuant to subdivision
32 three of this section shall be used to supplement and not supplant any
33 local funds which such county or city would otherwise have had to expend
34 for the provision of counsel and expert, investigative and other
35 services pursuant to article eighteen-B of the county law. All such
36 state funds received by a county or city shall be used to improve the
37 quality of services provided pursuant to article eighteen-B of the coun-
38 ty law.

39 (c) Notwithstanding the provisions of any other law, as a precondition
40 for receiving state assistance pursuant to subdivision three of this
41 section, a county or city shall be required pursuant to this paragraph
42 to demonstrate compliance with the maintenance of effort provisions of
43 paragraph (b) of this subdivision. Such compliance shall be shown as a
44 part of the annual report submitted by the county or city in accordance
45 with subdivision two of section seven hundred twenty-two-f of the county
46 law. Such maintenance of effort shall be shown by demonstrating with
47 specificity:

48 (i) that the total amount of local funds expended for services and
49 expenses pursuant to article eighteen-B of the county law during the
50 applicable calendar year reporting period did not decrease from the
51 amount of such local funds expended during the previous calendar year
52 provided, however, that with respect to the report filed in two thousand
53 six regarding calendar year two thousand five, such maintenance of
54 effort shall be shown by demonstrating with specificity that the total
55 amount of local funds expended for services and expenses pursuant to
56 article eighteen-B of the county law during the two thousand five calen-
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1 dar year did not decrease from the amount of such local funds expended
2 during calendar year two thousand two; or

3 (ii) where the amount of local funds expended for such services
4 decreased over such period, that all state funds received during the
5 most recent state fiscal year pursuant to subdivision three of this
6 section were used to assure an improvement in the quality of services
7 provided in accordance with article eighteen-B of the county law and

8 have not been used to supplant local funds. For purposes of this subpar-
9 agraph, whether there has been an improvement in the quality of such
10 services shall be determined by considering the expertise, training and
11 resources made available to attorneys, experts and investigators provid-
12 ing such services; the total caseload handled by such attorneys, experts
13 and investigators as such relates to the time expended in each case and
14 the quality of services provided; the system by which attorneys were
15 matched to cases with a degree of complexity suitable to each attorney's
16 training and experience; the provision of timely and confidential access
17 to such attorneys and expert and investigative services; and any other
18 similar factors related to the delivery of quality public defense
19 services.]

20 S 5. This act shall take effect immediately; provided, however, that
21 section 499-m of the judiciary law, as added by section one of this act,
22 and the provisions of section three of this act shall take effect April
23 1, 2012; provided further the provisions of section four of this act
24 shall take effect January 1, 2012; and, provided further the amendments
25 to section 722 of the county law made by section two of this act shall
26 take effect one year after such effective date.

Contact Webmaster

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