

provide a qualified presumption in favor of the issuance of a certificate of relief from civil disabilities based on a federal conviction in New York when the defendant has a favorable written recommendation from the chief federal probation officer of the district.

➤ **Chap. 56, Part OO, § 5 (A.9706-C) (Inmate access to presentence reports for parole related proceedings). Effective: July 22, 2010.**

Amends CPL § 390.50(2) to give inmates a right to a copy of the presentence report from the court in order to prepare for a parole hearing or appeal.

Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination. In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the parole

board or intends to file an administrative appeal of a parole board determination. The court shall respond to the defendant's written request within twenty days from receipt of the defendant's written request.

➤ **Chap. 112 (A.2374-A) (Jury pools — collection of demographic data). Effective: September 13, 2010.**

Requires commissioners of jurors to collect demographic data concerning jurors' race, ethnicity, age and sex. The data are to be annually compiled by OCA and submitted to the governor, the legislature, and the Chief Judge of the State of New York.

➤ **Chap. 91 (A.4300) (Unauthorized practice of law — Attorney General may criminally prosecute). Effective: May 25, 2010.**

Amends Judiciary Law § 476-a to authorize the Attorney General to criminally prosecute the crime of unauthorized practice of law [addressing *People v. Romero*, 91 N.Y.2d 750 (1998)]. ⚖

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## 2010 Legislative Highlight

### Summary of Legislation Creating the Office of Indigent Legal Services: Part E of Chapter 56 of the Laws of 2010

By Susan C. Bryant\*

Part E is comprised of four sections:

- Section 1: Creation of the Office of Indigent Legal Services and the Indigent Legal Services Board (adding a new Executive Law article 30 [§§ 832-833])
- Section 2: Amendments to State Finance Law § 98-b regarding distribution of monies from the Indigent Legal Services Fund
- Section 3: Amendments to County Law § 722(3) to allow counties to create conflict defender offices through bar association plans
- Section 4: Effective date- Part E is effective immediately (June 22, 2010).

#### I. Section 1: Office of Indigent Legal Services and the Indigent Legal Services Board

The Office of Indigent Legal Services is housed within the Executive Department, but not a particular executive agency. The Office reports to the Indigent Legal Services Board and the Board will consult with and advise the Office.

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#### A. The Indigent Legal Services Board

The Board has nine members. The Chief Judge of the Court of Appeals is the chair of the Board. The eight other members are appointed by the Governor as follows:

- One nominated by the temporary president of the Senate;
- One nominated by the speaker of the Assembly;
- One appointed by the Governor from a list of at least three attorney nominees submitted by the New York State Bar Association;
- Two appointed by the Governor from a list of at least four nominees submitted by the New York State Association of Counties;
- One appointed by the Governor and shall be an attorney who has provided public defense services for at least five years;
- One attorney appointed by the Governor;
- One appointed from a list of no more than two nominees submitted by the Chief Administrator of the courts, each of whom shall be a current or retired judge or justice elected to the supreme, county or family court or appointed to the New York City criminal or family court and has substantial experience presiding as such a judge or justice in trial matters before such court.

Board members cannot be active prosecutors, law enforcement officials, or persons providing prosecution-related services or employees of such prosecutor, official, or person. The Chief Judge serves ex officio. The other board members serve for three year terms, except that the NYSBA nominee, one of the two NYSAC nominees, and

the Governor's attorney appointment serve initial terms of two years.

### **B. Director of the Office of Indigent Legal Services**

The Board nominates the Director of the Office and the Governor must approve/fail to act within 30 days or disapprove the nominee. The Director must be admitted to practice law, have not less than five years' professional experience in the area of public defense services, and have a demonstrated commitment to the provision of quality public defense representation and to communities served by public defense providers. The Director serves for a five-year term, but can be removed by two-thirds of the members of the Board for good cause shown, after notice and an opportunity to be heard.

### **C. Purpose of the Office and the Board**

The purpose of the Office and the Board is to "monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law." This purpose covers both criminal and family court adult representation, as well as all other types of representation authorized by County Law article 18-B.

### **D. Data Collection**

The Office is responsible for collecting and receiving a wide variety of information about public defense services, including information about the current systems being used in each county, caseloads, spending for 18-B services, and eligibility determinations, as well as data comparing caseloads and expenditures of public defense providers to those providing prosecution-related services. Section 832 requires that counties, providers, and other state and local entities cooperate with the Office's data collection. The Office will use this data to inform its recommendations and creation of standards.

### **E. Reporting by Counties and Public Defense Providers**

The Office will establish measures of performance on which programs and counties must regularly report to the Office, which will assist it in monitoring the quality of public defense services. In addition to reporting to the Office, counties are required to continue to file County Law § 722-f(2) reports with the State Comptroller.

### **F. Funding**

The Office is charged with making recommendations regarding distribution and expenditure of monies appropriated for indigent legal services, including monies from the Indigent Legal Services Fund. In developing those recommendations, the Office may consider, in addition to measures of performance, commitment of local resources and changes thereto, geographic balance of funding among regions, population, crime rates, poverty rates, and individual community needs.

The Office is responsible for targeting grants in support of innovative and cost effective solutions that enhance the provision of quality services, including collaborative efforts serving multiple counties. As part of its recommendations for improving the delivery of public defense services in a manner that is consistent with the needs of the counties, the efficiency and adequacy of county public defense plans, and the quality of representation offered, the Office also may receive applications for and distribute grants pursuant to specified criteria.

The Office will present its funding recommendations to the Indigent Legal Services Board. The Board must accept, reject, or modify the Office's recommendations regarding distributions from the Indigent Legal Services Fund (see Point II below for more information about the ILSF funds available to the Office and the Board). The Board must set forth the basis for its determination. The Office will execute the Board's decision regarding the distribution of funds.

The Office may apply for and accept grants or gifts that fit with the purposes of the Office or the Board. The Office may expend that money to effectuate those purposes.

### **G. Standards and Recommendations**

The Office also is responsible for developing standards, guidelines, and recommendations regarding article 18-B services. The Office must examine, evaluate, and monitor services provided in each county pursuant to article 18-B. The Indigent Legal Services Board must also evaluate existing article 18-B services.

The Office also must analyze and evaluate the data and information it collected to recommend measures to enhance article 18-B services and ensure that clients are provided quality representation from fiscally responsible providers. Those recommendations must include, at a minimum: (1) criteria and procedures to guide courts in making eligibility determinations; and (2) standards, criteria, and a process for qualifying and re-qualifying attorneys to provide 18-B services.

The Office must establish standards and criteria for the provision of representation in conflict cases and assist counties in developing plans consistent with such standards and criteria. For more information on conflict defense representation, see Point III below.

Additionally, the Office must develop recommendations to improve delivery of services in a manner that is consistent with county needs, efficiency and adequacy of plans operated in counties, and the quality of representation offered.

As with funding recommendations, the Office will present its findings and recommendations for consideration by the Board. The Board must determine the type of public legal services that should be provided in the State to best serve the interests of article 18-B clients. The Board has a duty to advise the governor, legislature, and judiciary.

ary regarding public defense services and make an annual report to the three branches. The Office is responsible for executing Board decisions.

### **II. Section 2: Amendments to State Finance Law § 98-b regarding distribution of monies from the Indigent Legal Services Fund**

State Finance Law § 98-b has been amended to establish a new way for distributing the Indigent Legal Services Fund. The purpose of the ILSF is to:

- Assist counties and New York City in providing legal representation for persons who are financially unable to afford counsel pursuant to County Law article 18-B;
- Assist the state in improving the quality of public defense services and funding representation provided by assigned counsel paid in accordance with Judiciary Law § 35; and
- Provide support for the operations, duties, responsibilities, and expenses of the Office of Indigent Legal Services and the Indigent Legal Services Board.

The Office of Court Administration (OCA) will continue to receive up to an annual sum of \$25 million for the provision of assigned counsel paid in accordance with Judiciary Law § 35.

Distributions from the ILSF for counties and New York City have been changed. New York City will receive an annual amount of \$40 million for the provision of 18-B services. In order to receive that money, NYC must continue to provide at a 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 18-B of the County Law during its 2009-2010 fiscal year.

Non-New York City counties will receive a percentage of the amount received in March 2010 as follows:

- March 2011: 90% of the amount received in 2010;
- March 2012: 75% of the amount received in 2010;
- March 2013: 50% of the amount received in 2010; and
- March 2014: 25% of the amount received in 2010.

Hamilton and Orleans Counties did not receive ILSF money in March 2010. Those two counties will receive percentage funding based on the amount each would have received in March 2010 had it not failed the maintenance of effort test.

Beginning in 2015, counties will receive ILSF money from the Office and the Board through general distributions and grants.

Remaining amounts in the ILSF after accounting for the payments to OCA, New York City, and the percentage payments to counties in the next four years, as well as payments for the operations of the Office and the Board,

will be distributed by the Office and the Board in accordance with the new Executive Law §§ 832 and 833.

The amended § 98-b specifies that ILSF money received by a county or city: "shall be used to supplement and not supplant any local funds which such county or city would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-B of the county law. All such state funds received by a county or city shall be used to improve the quality of services provided pursuant to article eighteen-B of the county law. Nothing in this paragraph shall preclude a county from decreasing local funds as long as the county demonstrates to the office of indigent legal services established by section 832 of the Executive Law that the quality of services has been maintained or enhanced notwithstanding the use of state funds."

As noted above, in making recommendations regarding the distribution and expenditure of remaining ILSF money, the Office may consider the commitment of local resources to 18-B services. The Office is also responsible for making recommendations regarding the distribution and expenditure of all ILSF funds, including the New York City and county annual distributions. Therefore, the Office may recommend that New York City and the counties use all ILSF monies received for specified purposes and the Board may accept those recommendations.

### **III. Section 3: Amendments to County Law § 722(3) to allow counties to create conflict defender offices through bar association plans**

County Law § 722(3) has been amended to allow bar association plans to provide representation through an assigned counsel program or an office of conflict defender or both. The term "office of conflict defender" is not defined in the statute. Plans must be approved by the state administrator prior to being placed in operation. When reviewing a plan that includes an office of conflict defender, the state administrator must employ the guidelines established by the Office of Indigent Legal Services pursuant to Executive Law § 832(3)(d).

The amended § 722(3)(c) states that a conflict defender office, as defined in § 722(3)(a)(ii), that was operated by a county as of March 31, 2010 may continue to operate until the Office of Indigent Legal Services promulgates criteria for the provision of services in conflict cases. Within 180 days of the promulgation of those criteria, such county must submit to the state administrator a bar association plan that includes the conflict defender office. The state administrator will either approve or disapprove the plan. If the plan is disapproved, the authorization under § 722(3)(c) to operate the office of conflict defender ceases. If the state administrator approves the plan, the county may operate the office of conflict defender in accordance with § 722(3)(a) and (3)(b). ♪