

2010-2011 NEW YORK STATE

**PUBLIC PROTECTION
AND GENERAL GOVERNMENT
ARTICLE VII LEGISLATION
(Laws of 2010, Chapter 56; A.9706-C/S.6606-B)**

**Part E creates
an Office of Indigent Legal Services and
an Indigent Legal Services Board
(Executive Law sections 832 and 833)**

PART E

12 Section 1. The executive law is amended by adding a new article 30 to
13 read as follows:

14 ARTICLE 30
15 INDIGENT LEGAL SERVICES

16 Section 832. Office of indigent legal services.

17 833. Indigent legal services board.

18 § 832. Office of indigent legal services. 1. There is hereby created
19 within the executive department the office of indigent legal services,
20 hereinafter referred to in this section as the "office". The purpose of
21 such office is to monitor, study and make efforts to improve the quality
22 of services provided pursuant to article eighteen-B of the county law.
23 The office shall report to the indigent legal services board established
24 pursuant to section eight hundred thirty-three of this article,
25 provided, however, that administrative matters of general application
26 within the executive department shall also be applicable to such office.

27 2. (a) Following the initial appointment of the members of the indi-
28 gent legal services board established pursuant to section eight hundred
29 thirty-three of this article, such board shall promptly nominate a full-
30 time director of the office and notify the governor of such nomination.
31 After approval or disapproval of the first nominee as director of the
32 office, or at any time thereafter when a vacancy shall exist or is
33 anticipated in the position of director of the office, the indigent
34 legal services board shall promptly nominate a full-time director of the
35 office, and notify the governor of such nomination. Nothing in this
36 paragraph shall prohibit the board from appointing an interim director
37 if there is a vacancy.

38 (b) The governor, within thirty days after receiving written notice of
39 any nomination of a director made pursuant to paragraph (a) of this
40 subdivision, may approve or disapprove the nomination. If the governor
41 approves such nomination, or fails to act on such nomination within such
42 thirty day period, the nominee shall thereupon commence his or her term
43 as director of the office. If, within such thirty day period, the gover-
44 nor serves upon the chair of such board a written notice disapproving
45 such nomination, the nominee shall not be authorized to serve as direc-
46 tor of the office provided, however, that such board may authorize an
47 interim director appointed pursuant to paragraph (a) of this subdivision
48 to serve or continue to serve as interim director until such time as a
49 director of the office is approved, or not timely disapproved, by the
50 governor. Following any disapproval, the board shall have sixty days to
51 submit another nominee, although such period may be extended, upon
52 request of the board, by the governor. A person appointed as interim

1 director may exercise all of the powers available to the director of
2 such office.

3 (c) The director of the office shall serve full-time and for a term of
4 five years. The director may be removed during this term for good cause
5 shown, after notice and an opportunity to be heard, by a vote of two-
6 thirds or more of the nine members of such board. The person serving as
7 director shall, upon assuming such position, be admitted to practice law
8 and shall have not less than five years professional experience in the
9 area of public defense services, and have a demonstrated commitment to
10 the provision of quality public defense representation and to the commu-
11 nities served by public defense providers.

12 (d) The director shall appoint employees and perform such other func-
13 tions as are appropriate to ensure the efficient operation of the office
14 within the amounts available therefor by appropriation.

15 3. Duties and responsibilities. The office shall, in consultation with
16 the indigent legal services board established pursuant to section eight
17 hundred thirty-three of this article, have the following duties and
18 responsibilities:

19 (a) to examine, evaluate and monitor services provided in each county
20 pursuant to article eighteen-B of the county law;

21 (b) to collect and receive information and data regarding the
22 provision of services pursuant to article eighteen-B of the county law
23 including, but not limited to:

24 (i) the types and combinations of such services being utilized in each
25 county;

26 (ii) the salaries and other compensation paid to individual adminis-
27 trators, attorneys and staff providing such services;

28 (iii) the actual caseloads of attorneys providing such services pursu-
29 ant to article eighteen-B of the county law;

30 (iv) how the caseloads of attorneys providing such services compare
31 with the caseloads of attorneys providing prosecution-related services
32 in each county;

33 (v) the types, nature and timing of dispositions of cases handled by
34 attorneys providing such services and attorneys providing prosecution-
35 related services;

36 (vi) the actual expenditures currently being made in each county on
37 such services and prosecution-related services;

38 (vii) the time, funds and in-kind resources currently being spent on
39 such services and prosecution-related services and the amount being
40 spent on ancillary services such as investigators, support staff, social
41 workers and expert witnesses, including consideration of all funds
42 received for such services from all sources;

43 (viii) the criteria and procedures used to determine whether a person
44 is eligible to receive such services, the number of persons considered
45 for and applicants denied such services, the reasons for the denials,
46 and the results of any review of such denials, including the number of
47 orders issued pursuant to section seven hundred twenty-two-d of the
48 county law; and

49 (ix) the standards and criteria used in programs and by each county to
50 determine whether individual attorneys are qualified to provide indigent
51 legal services, on a case by case basis;

52 (c) to analyze and evaluate the collected data, and undertake any
53 necessary research and studies, in order to consider and recommend meas-
54 ures to enhance the provision of indigent legal services and to ensure
55 that recipients of services provided pursuant to article eighteen-B of
56 the county law are provided with quality representation from fiscally

1 responsible providers, which shall include but not be limited to: estab-
2 lishing criteria and procedures to guide courts in determining whether a
3 person is eligible for such representation; establishing standards,
4 criteria and a process for qualifying and re-qualifying attorneys to
5 provide such services pursuant to article eighteen-B of the county law;

6 (d) to establish standards and criteria for the provision of such
7 services in cases involving a conflict of interest and to assist coun-
8 ties to develop plans consistent with such standards and criteria;

9 (e) to develop recommendations to improve the delivery of such
10 services in a manner that is consistent with the needs of the counties,
11 the efficiency and adequacy of the public defense plan operated in the
12 counties and the quality of representation offered, which may include
13 receiving applications for and distributing grants pursuant to specified
14 criteria;

15 (f) to develop recommendations regarding the distribution and expendi-
16 ture of any monies appropriated for indigent legal services, including
17 but not limited to monies from the indigent legal services fund created
18 pursuant to section ninety-eight-b of the state finance law, for consid-
19 eration by the indigent legal services board established pursuant to
20 section eight hundred thirty-three of this article; and, in making such
21 recommendations, may consider, in addition to measures of performance,
22 the commitment of local resources to such services and the changes ther-
23 eto; the geographic balance of funding among the regions of the state,
24 population, crime rates, poverty rates and individual community needs;

25 (g) to target grants in support of innovative and cost effective
26 solutions that enhance the provision of quality indigent legal services,
27 including collaborative efforts serving multiple counties;

28 (h) to investigate and monitor any other matter related to indigent
29 legal services that the director deems important;

30 (i) to request and receive from any department, division, board,
31 bureau, commission or other agency of the state or any political subdi-
32 vision of the state or any public authority such assistance, information
33 and data, subject to limitations on the disclosure of information
34 provided confidentially to indigent legal service providers, as will
35 enable the office to properly carry out its functions, powers and
36 duties;

37 (j) to establish measures of performance which programs and counties
38 shall regularly report to the office, to assist the office in monitoring
39 the quality of indigent legal services;

40 (k) to apply for and accept any grant or gift for any of the purposes
41 of the office or the indigent legal services board. Any monies so
42 received may be expended by the office to effectuate any such purpose,
43 subject to the same limitations as to approval of expenditures and audit
44 as are prescribed for state monies appropriated for such purposes;

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

48 (m) to execute decisions of the indigent legal services board estab-
49 lished pursuant to section eight hundred thirty-three of this article,
50 including the distribution of funds.

51 § 833. Indigent legal services board. 1. There is hereby created the
52 indigent legal services board hereinafter referred to in this section as
53 the "board". The purpose of such board shall be to monitor, study and
54 make efforts to improve the quality of services provided pursuant to
55 article eighteen-B of the county law. No active prosecutor, law enforce-
56 ment official or person providing prosecution-related services, or

1 employee of such a prosecutor, official or person, shall be appointed to
2 or serve on such board. The board shall consist of nine members who
3 shall be appointed as follows:

4 (a) one shall be the chief judge of the court of appeals, who shall be
5 the chair of the board;

6 (b) one shall be appointed by the governor on the recommendation of
7 the temporary president of the senate;

8 (c) one shall be appointed by the governor on the recommendation of
9 the speaker of the assembly;

10 (d) one shall be appointed by the governor from a list of at least
11 three attorney nominees submitted by the New York state bar association;

12 (e) two shall be appointed by the governor from a list of at least
13 four nominees submitted by the New York state association of counties;

14 (f) one shall be appointed by the governor and shall be an attorney
15 who has provided public defense services for at least five years;

16 (g) one attorney who shall be appointed by the governor; and

17 (h) one shall be appointed by the governor, from a list of no more
18 than two nominees submitted by the chief administrator of the courts,
19 each of whom shall be a judge or justice, or retired judge or justice,
20 who was elected to the supreme, county or family court, or appointed to
21 the criminal court or family court in the city of New York, and has
22 substantial experience presiding as such a judge or justice in trial
23 matters before such court.

24 2. All members of the board shall be appointed for terms of three
25 years such terms to commence on August first, and expire July thirty-
26 first, provided, however, that the chief judge of the court of appeals
27 shall serve ex officio; and provided further, that the initial term of
28 the member appointed pursuant to paragraph (d), the first of the two
29 members appointed pursuant to paragraph (e) and the member appointed
30 under paragraph (g) of subdivision one of this section shall be for two
31 years. Initial appointments must be made within sixty days of the effec-
32 tive date of this subdivision. Any member chosen to fill a vacancy
33 created otherwise than by expiration of term shall be appointed for the
34 unexpired term of the member whom he or she is to succeed. Vacancies
35 caused by expiration of a term or otherwise shall be filled promptly and
36 in the same manner as original appointments. Any member may be reap-
37 pointed for additional terms.

38 A member of the board shall continue in such position upon the expira-
39 tion of his or her term until such time as he or she is reappointed or
40 his or her successor is appointed, as the case may be.

41 3. Membership on the board shall not constitute the holding of an
42 office, and members of the board shall not be required to take and file
43 oaths of office before serving on the board. The board shall not have
44 the right to exercise any portion of the sovereign power of the state.

45 4. The board shall meet at least four times in each year. The first
46 meeting of the board shall be held within thirty days of the appointment
47 of the full board or within sixty days after the effective date of this
48 subdivision, whichever occurs earlier. Special meetings may be called by
49 the chair and shall be called by the chair upon the request of five
50 members of the board. The board may establish its own procedures with
51 respect to the conduct of its meetings and other affairs; provided,
52 however, that the quorum and majority provisions of section forty-one of
53 the general construction law shall govern all actions taken by the
54 board.

1 5. The members of the board shall receive no compensation for their
2 services but shall be allowed their actual and necessary expenses
3 incurred in the performance of their functions hereunder.

4 6. No member of the board shall be disqualified from holding any
5 public office or employment, nor shall he or she forfeit any such office
6 or employment, by reason of his or her appointment pursuant to this
7 section, notwithstanding the provisions of any other general, special or
8 local law, ordinance or city charter.

9 7. The board shall have the following duties and responsibilities:

10 (a) To evaluate existing indigent legal services programs and deter-
11 mine the type of indigent legal services that should be provided in New
12 York state to best serve the interests of persons receiving such
13 services;

14 (b) To consult with and advise the office of indigent legal services
15 in carrying out the duties and responsibilities of such office;

16 (c) To accept, reject or modify recommendations made by the office of
17 indigent legal services regarding the allocation of funds and the award-
18 ing of grants, including incentive grants, from the indigent legal
19 services fund created pursuant to section ninety-eight-b of the state
20 finance law. When acting on such a recommendation, the board shall set
21 forth the basis for its determination; and

22 (d) To advise and to make an annual report to the governor, legisla-
23 ture and judiciary.

24 § 2. Section 98-b of the state finance law, as added by section 12 of
25 part J of chapter 62 of the laws of 2003, subdivision 3 as amended by
26 section 1 of part H of chapter 56 of the laws of 2004 and paragraph (b)
27 of subdivision 3 as amended by section 1 of part G of chapter 56 of the
28 laws of 2005, is amended to read as follows:

29 § 98-b. Indigent legal services fund. 1. There is hereby established
30 in the joint custody of the comptroller and the commissioner of taxation
31 and finance a special fund to be known as the indigent legal services
32 fund.

33 2. Such fund shall consist of all moneys appropriated for the purpose
34 of such fund, all other moneys required to be paid into or credited to
35 such fund, and all moneys received by the fund or donated to it.

36 [3.] (a) [As provided in this subdivision, moneys received by the
37 indigent legal services fund each calendar year from January first
38 through December thirty-first shall be made available by the state comp-
39 troller in the immediately succeeding calendar year] The purpose of such
40 fund shall be to (i) assist counties and, in the case of a county wholly
41 contained within a city, such city, in providing legal representation
42 for persons who are financially unable to afford counsel pursuant to
43 article eighteen-B of the county law; [and] (ii) assist the state, in
44 improving the quality of public defense services and funding represen-
45 tation provided by assigned counsel paid in accordance with section
46 thirty-five of the judiciary law; and (iii) provide support for the
47 operations, duties, responsibilities and expenses of the office of indi-
48 gent legal services and the indigent legal services board established,
49 respectively, pursuant to sections eight hundred thirty-two and eight
50 hundred thirty-three of the executive law. [Moneys from the fund shall
51 be distributed at the direction of the state comptroller in accordance
52 with the provisions of this subdivision.

53 (b) (i) Commencing on March thirty-first, two thousand five, moneys
54 from such fund shall first be made available, in the calendar year next
55 succeeding the calendar year in which collected, to reimburse the state
56 for payments, made in the previous calendar year, for,]

1 (b) State funds received by a county or city from such fund shall be
2 used to supplement and not supplant any local funds which such county or
3 city would otherwise have had to expend for the provision of counsel and
4 expert, investigative and other services pursuant to article eighteen-B
5 of the county law. All such state funds received by a county or city
6 shall be used to improve the quality of services provided pursuant to
7 article eighteen-B of the county law. Nothing in this paragraph shall
8 preclude a county from decreasing local funds as long as the county
9 demonstrates to the office of indigent legal services established by
10 section eight hundred thirty-two of the executive law that the quality
11 of services has been maintained or enhanced notwithstanding the use of
12 state funds.

13 (c) As used in this section, "local funds" shall mean all funds appro-
14 priated or allocated by a county or, in the case of a county wholly
15 contained within a city, such city, for services and expenses in accord-
16 ance with article eighteen-B of the county law, other than funds
17 received from: (i) the federal government or the state; or (ii) a
18 private source, where such city or county does not have authority or
19 control over the payment of such funds by such private source.

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

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

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

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

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

54 (ii) The state comptroller shall then total the amount of local funds
55 expended by all such counties and such city to determine the sum of such

1 moneys expended by all such counties and such city for providing such
2 representation in such calendar year.

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

6 (iv) The state comptroller shall then determine:

7 (A) the fund amount available to be distributed pursuant to this para-
8 graph, which shall be the amount received by the indigent legal services
9 fund in the immediately preceding calendar year, minus the amount to be
10 distributed to the state under paragraph (b) of this subdivision
11 provided, however, that with respect to the first payment made to coun-
12 ties and such city on March thirty-first, two thousand five, such
13 payment shall be made from the amounts received by the indigent legal
14 services fund in the immediately preceding two calendar years, minus the
15 amount to be distributed to the state under paragraph (b) of this subdi-
16 vision; and

17 (B) the annual payment amount to be paid to each county and such city
18 pursuant to this subdivision, which shall be the product of the percent-
19 age share of statewide local funds expended by each such county and
20 city, as determined pursuant to subparagraph (iii) of this paragraph,
21 multiplied by the fund amount available for distribution, as determined
22 pursuant to clause (A) of this subparagraph.

23 (d) All payments from this account shall be made upon vouchers
24 approved and certified and upon audit and warrant of the state comp-
25 troller. The state comptroller shall, as soon as practicable, make such
26 payments to the state and each county and each city in a lump sum
27 payment.

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

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

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

53 (i) that the total amount of local funds expended for services and
54 expenses pursuant to article eighteen-B of the county law during the
55 applicable calendar year reporting period did not decrease from the
56 amount of such local funds expended during the previous calendar year

1 provided, however, that with respect to the report filed in two thousand
2 six regarding calendar year two thousand five, such maintenance of
3 effort shall be shown by demonstrating with specificity that the total
4 amount of local funds expended for services and expenses pursuant to
5 article eighteen-B of the county law during the two thousand five calen-
6 dar year did not decrease from the amount of such local funds expended
7 during calendar year two thousand two; or

8 (ii) where the amount of local funds expended for such services
9 decreased over such period, that all state funds received during the
10 most recent state fiscal year pursuant to subdivision three of this
11 section were used to assure an improvement in the quality of services
12 provided in accordance with article eighteen-B of the county law and
13 have not been used to supplant local funds. For purposes of this subpar-
14 agraph, whether there has been an improvement in the quality of such
15 services shall be determined by considering the expertise, training and
16 resources made available to attorneys, experts and investigators provid-
17 ing such services; the total caseload handled by such attorneys, experts
18 and investigators as such relates to the time expended in each case and
19 the quality of services provided; the system by which attorneys were
20 matched to cases with a degree of complexity suitable to each attorney's
21 training and experience; the provision of timely and confidential access
22 to such attorneys and expert and investigative services; and any other
23 similar factors related to the delivery of quality public defense
24 services.]

25 (b) An annual amount of forty million dollars shall be made available
26 to the city of New York from such fund for the provision of services
27 pursuant to article eighteen-B of the county law; provided that the city
28 of New York shall continue to provide at minimum the aggregate amount of
29 funding for public defense services including, but not limited to, the
30 amount of funding for contractors of public defense services and indi-
31 vidual defense attorneys, that it provided, pursuant to article eigh-
32 teen-B of the county law during its two thousand nine--two thousand ten
33 fiscal year.

34 (c) Within the first fifteen days of March two thousand eleven, each
35 county other than a county wholly contained within the city of New York,
36 shall receive ninety percent of the amount paid to such county in March
37 two thousand ten. Within the first fifteen days of March two thousand
38 twelve, each county other than a county wholly contained within the city
39 of New York shall receive seventy-five percent of the amount paid to
40 such county in March two thousand ten. Within the first fifteen days of
41 March two thousand thirteen, each county other than a county wholly
42 contained within the city of New York shall receive fifty percent of the
43 amount paid to such county in March two thousand ten. Within the first
44 fifteen days of March two thousand fourteen, each county other than a
45 county wholly contained within the city of New York shall receive twen-
46 ty-five percent of the amount paid to such county in March two thousand
47 ten. For all state fiscal years following the two thousand thirteen--
48 two thousand fourteen fiscal year, there shall be no required annual
49 payments pursuant to this paragraph. Notwithstanding the provisions of
50 this paragraph, for each of the four required payments made to counties
51 within the first fifteen days of March two thousand eleven, two thousand
52 twelve, two thousand thirteen and two thousand fourteen, Hamilton and
53 Orleans counties shall receive such percentage payments based on the
54 amounts that each county would have received in March two thousand ten
55 had it satisfied the maintenance of effort requirement set forth in

1 paragraph (c) of subdivision four of this section in effect on such
2 date.

3 (d) Remaining amounts within such fund, after accounting for annual
4 payments required in paragraphs (a), (b) and (c) of this subdivision and
5 subparagraph (iii) of paragraph (a) of subdivision two of this section
6 shall be distributed in accordance with sections eight hundred thirty-
7 two and eight hundred thirty-three of the executive law.

8 § 3. Subdivision 3 of section 722 of the county law, as amended by
9 chapter 682 of the laws of 1977, is amended to read as follows:

10 3. (a) Representation by counsel furnished pursuant to either or both
11 of the following: a plan of a bar association in each county or the city
12 in which a county is wholly contained whereby: (i) the services of
13 private counsel are rotated and coordinated by an administrator, and
14 such administrator may be compensated for such service; or (ii) such
15 representation is provided by an office of conflict defender.

16 (b) Any plan of a bar association must receive the approval of the
17 state administrator before the plan is placed in operation. In the coun-
18 ty of Hamilton, [such] representation pursuant to a plan of a bar asso-
19 ciation in accordance with subparagraph (i) of paragraph (a) of this
20 subdivision may be by counsel furnished by the Fulton county bar associ-
21 ation pursuant to a plan of the Fulton county bar association, following
22 approval of the state administrator. When considering approval of an
23 office of conflict defender pursuant to this section, the state adminis-
24 trator shall employ the guidelines established by the office of indigent
25 legal services pursuant to paragraph (d) of subdivision three of section
26 eight hundred thirty-two of the executive law.

27 (c) Any county operating an office of conflict defender, as described
28 in subparagraph (ii) of paragraph (a) of this subdivision, as of March
29 thirty-first, two thousand ten may continue to utilize the services
30 provided by such office provided that the county submits a plan to the
31 state administrator within one hundred eighty days after the promulga-
32 tion of criteria for the provision of conflict defender services by the
33 office of indigent legal services. The authority to operate such an
34 office pursuant to this paragraph shall expire when the state adminis-
35 trator approves or disapproves such plan. Upon approval, the county is
36 authorized to operate such office in accordance with paragraphs (a) and
37 (b) of this subdivision.

38 § 4. This act shall take effect immediately.