

## Memorandum in Urging APPROVAL

### STATEWIDE FUNDING AND OVERSIGHT OF INDIGENT DEFENSE SERVICES

NYSBA #24-C-GOV

August 1, 2016

A. 10706  
S. 8114

By: M. of A. Fahey  
By: Senator DeFrancisco

This is one of the most important bills addressing the criminal justice system to be passed by the Legislature in recent years. It revises a funding structure that goes back to the 1960s and that has proven to be unworkable. It would bring New York far closer to providing adequate resources to meet its fundamental constitutional obligation to provide indigent defendants with representation in criminal proceedings, an obligation that is essential if we are to have a justice system of which the state can be proud.

The State Bar Association has a long history of advocating for a meaningful criminal justice system, including a system fair to the poor and otherwise disadvantaged. Over 100 years ago, the Association created a special committee dedicated to this issue and endorsed the concept of public defenders providing representation to indigent criminal defendants.

Following this tradition, the Association today continues to urge quality public defense, supported by oversight, quality assurances, and sufficient resources to providers of mandated representation.

In 2006, the State Commission on the Future of Indigent Defense Services, created by then Chief Judge Judith S. Kaye, examined New York State's county-based indigent criminal defense system, and made the finding that there is "a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it." Fortunately, the state has recognized this failure and begun to take corrective steps.

In 2010, it created the Office of Indigent Legal Services ("Office"). The State Bar Association viewed the creation of that Office as a significant step toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York's public defense system.

In the fall of 2014, the state agreed to settle a class-action lawsuit (*Hurrell-Harring v. State*) that accused New York State of failing to provide adequate legal defense for the poor in five counties (Suffolk County on Long Island and four upstate counties: Ontario, Onondaga, Schuyler and Washington). The settlement, which included many provisions to enhance the quality of representation, committed the state to paying for improvements to the indigent defense systems in those counties.

This bill represents the next major step forward. It expands state funding beyond the counties involved in the lawsuit to the entire public defense system and recognizes that quality representation should not be limited only to the five named counties.

The Association appreciates that the bill would shift a significant financial obligation from the counties to the state. The seven-year phase-in provides for an orderly transfer of the funding obligation. We are aware that this may not be simple, but given the recognized failure in meeting a constitutional obligation, it is essential.

Thus, we now urge that the next important step be taken by enacting into law this bill to provide appropriate state funding and ensure rules and standards for the provision of indigent criminal defense services throughout New York. These goals are widely accepted as the obligations of a just society.

**The New York State Bar Association strongly supports this legislation to ensure adequate statewide funding and oversight regarding indigent criminal defense services. We respectfully urge Governor Cuomo to APPROVE this legislation.**