

Legislation Text

File #: ID-5379, **Version:** 1

Narrative of Resolution:

Calling on the State of New York to fully fund 18B Assigned Counsel Statutory Pay Levels

If Resolution requires expenditure of County Funds, provide the following information:

Amount to be authorized by Resolution: Click or tap here to enter text.

Are funds already budgeted? Choose an item.

Specify Compliance with Procurement Procedures:

RESOLUTION INTRODUCED BY EXECUTIVE COMMITTEE CALLING ON THE STATE OF NEW YORK TO FULLY FUND COUNTY LAW 18B ASSIGNED COUNSEL STATUTORY PAY LEVELS

WHEREAS, the United States Constitution established, and the Supreme Court decision Gideon v. Wainwright clarified, that competent counsel is to be given to all accused of a crime, regardless of their ability to pay; and

WHEREAS, New York State took legislative action to establish a criminal indigent defense legal system that passed the responsibility of providing these criminal defense services, and many of the costs associated with them, to counties and local property taxpayers; and

WHEREAS, in 2007, the New York State Civil Liberties Union sued the State of New York in Hurrell-Harring v. State of New York, which showed indigent criminal defense services were underfunded by the State and failed to meet constitutionally required standards; and

WHEREAS, prior to Hurrell-Harring, the 57 New York counties spent \$164 million annually on public defense while the State provided the 57 counties with only \$39 million in indigent defense support; and

WHEREAS, the New York State Legislature recognized that the State needs to provide additional funding and, in 2017, passed historic legislation allocating \$250 million per year, when fully implemented, of state funding to directly improve indigent defense services; and

WHEREAS, while counties are still funding the same amount, the State's 2017 funding increase has made New York State a leader in indigent defense services; and

WHEREAS, due to different county demographics and needs, counties have flexibility in how to provide criminal defense by using a combination of public defenders, conflict defense offices, and private contracted attorneys known as 18B counsel (named after the applicable section of County Law); and

WHEREAS, all counties rely on the services of 18B attorneys to perform these services to handle the overflow of work and handle conflicts that come into the public defender's office; and

WHEREAS, unfortunately, the 2017 state legislation did not address the pay rate for 18B attorneys; and

WHEREAS, Article 18B establishes compensation paid to attorneys for assigned counsel work at \$60/hour for misdemeanor matters and \$75/hour for felony defense; and

WHEREAS, these rates have remained unchanged since 2004 and, in that same time period, the United States has seen inflation rise by 57 percent; and

WHEREAS, counties across the State have had difficulty in recent years attracting and keeping quality 18B attorneys in their region, with stagnate pay reported as the major contributing factor; and

WHEREAS, without properly funding 18B attorneys, which will keep and attract quality attorneys, the good work by the State to improve indigent defense services could be in jeopardy; and

WHEREAS, the 2023-24 Executive Budget includes an 18b pay rate increase of \$158 per hour in downstate NY and \$118 per hour rest of State, but fails to include any funding for this increase; and

WHEREAS, this increase without funding will cost county governments approximately \$150 million annually, and Sullivan County between \$300,000 to \$400,000 annually, an amount that without state support threatens the quality of county government services and cuts into the gains HH made throughout the defense system; and

WHEREAS, New York State Indigent Legal Services (NYS ILS) agrees that the rate increase without state funding is detrimental to the public defense system and provided Budget testimony that said, while we appreciate that the Executive budget includes a proposal to increase the hourly rate paid to assigned counsel attorneys, the proposal suffers from significant flaws that jeopardize the sustained progress of HH settlement implementation and its extension statewide.”

NOW, THEREFORE, BE IT RESOLVED, that the Sullivan County Legislature calls on the State to increase the 18B attorney rate to equitable levels; and

BE IT FURTHER RESOLVED, the State needs to fully fund this increase in keeping with the reasoning set forth in the Hurrell-Harring case, and to build on the State Legislature’s historic 2017 legislation; and

BE IT FURTHER RESOLVED, that the Sullivan County Legislature shall forward copies of this resolution to the Governor of the State of New York, New York State Association of Counties, and all others deemed necessary and proper.