



New York State Defenders Association, Inc.

Public Defense Backup Center

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Resolution Endorsing the State's Responsibility to Fully Fund All County Public Defense Programs, Including Any Increased Costs Incurred by Complying with the Office of Indigent Legal Service's Standards

WHEREAS, it is a fundamental right of all persons in the United States to be represented by counsel in all criminal prosecutions; and in the case of *Gideon vs. Wainwright*, 372 U.S. 335, the United States Supreme Court ruled that persons who were unable to afford counsel had a constitutional right to be defended by an appointed attorney paid by the State, and

WHEREAS, New York State has chosen to fulfill its obligation to provide representation to people unable to afford counsel by requiring each county outside New York City and New York City to implement and fund a plan to provide such representation, and

WHEREAS, in 2006 the Kaye Commission on the Future of Indigent Legal Services concluded that a system of county operated and funded public defense services failed to satisfy the constitutional obligation to protect the rights of persons accused of crime and recommended that funding for mandated legal services come from the State's general fund rather than from the counties, and

WHEREAS, on April 27, 2007, the Board of Directors of the New York State Defenders Association adopted a list of Defender System "Must Haves" drafted by the Chief Defenders of New York containing the following:

- "Adequate and full State funding, with no reduction in existing level of funding for any county and/or region;
- Fair and consistent level of quality throughout the state," and

WHEREAS, New York State has entered into an agreement to settle the *Hurrell-Harring vs. State of New York* class action lawsuit, and such agreement acknowledges that the Office of Indigent Legal Services and the Indigent Legal Services Board are statutorily authorized to monitor and study indigent legal services in the state, to recommend measures to improve those services and to establish statewide standards to improve the quality of public defense legal services, and

WHEREAS, by entering into such agreement, the State acknowledges that it is constitutionally required to fund public defense services, and to fund initiatives to improve the quality of public defense, ensure representation at arraignment, implement caseload standards for providers of indigent legal services, and implement statewide standards for determining eligibility for mandated representation, and

WHEREAS, requiring counties to finance the State's obligation to provide public defense services imposes a significant uncontrollable financial burden on counties dependent on real property taxes to fund needed services, and subject to a State imposed tax cap,

IT IS HEREBY RESOLVED, that the New York State Defenders Association supports the timely implementation of the State's responsibility to fund in all counties the full amount necessary to provide public defense legal services, and the full amount necessary to ensure the delivery of quality legal services for clients, including any increased costs incurred by public defense programs in complying with any standards promulgated by the Office of Indigent Legal Services; and the first important step is passage of the Public Defense Mandate Relief Act (A.6202C and S.6341A).

ADOPTED BY THE BOARD OF DIRECTORS OF THE NEW YORK STATE DEFENDERS
ASSOCIATION

May 2, 2016

Albany, NY