

Supporting The Creation Of An Independent Public Defense Commission And Statewide Public Defense System As Recommended By The Kaye Commission

The Ways and Means Committee (Chairman Lomita and Legislators Bartels, Berardi, Gregorius, Provenzano, Zimet, Cummings, Gerentine and Noonan) offers the following:

WHEREAS, the right of accused individuals to legal representation regardless of their financial ability to hire an attorney is a hallmark of this State and Nation's commitment to equal justice, and

WHEREAS, the right to counsel is enshrined in the landmark decisions *Gideon v Wainwright* (United States Supreme Court, 1963) and *People v Witenski* (New York State Court of Appeals, 1965) and decisions following them, and

WHEREAS, New York State's commitment to equal justice dates back to colonial days, as the *Witenski* decision noted, and our courts had a century-long tradition of appointing counsel for the poor by the time the Sixth Amendment to the United States Constitution was adopted as part of the Bill of Rights, and

WHEREAS, in 1965 New York State began requiring the counties and New York City to provide legal services mandated by law, setting out in Article 18-B of the County Law a variety of programs that could be adopted for that purpose, all at local expense, and

WHEREAS, County Law Article 18-B also requires the counties and New York City to provide counsel for eligible litigants in various non-criminal matters in which a right to counsel exists, including certain Family Court matters, and

WHEREAS, the public defense system established by Article 18-B, local costs for which were originally envisioned as being offset by state revenue sharing funds, has devolved into an underfunded state mandate that financially burdens the counties and New York City, and

WHEREAS, experience and studies show that the county-by-county public defense system created by Article-18B fails to ensure efficient, high-quality representation to eligible clients across the state, resulting in an ongoing crisis in the justice system, and

WHEREAS, major flaws in the current patchwork system include lack of enforceable standards, lack of independence of the defense function, lack of adequate funding, and lack of accountability, and

Resolution No. 381 November 14, 2007

Supporting The Creation Of An Independent Public Defense Commission And Statewide Public Defense System As Recommended By The Kaye Commission

WHEREAS, some eligible clients are denied counsel altogether or face delays in getting counsel, and

WHEREAS, public defense lawyers often lack the time, resources, or training to research and investigate every client's case, to talk with and listen to every client, and to determine a strategy to further each client's best interest, and

WHEREAS, public defense clients and their lawyers often lack access to services necessary to prepare and conduct their cases, including interpreters, investigators, social workers, sentencing advocates, immigration experts and others, and

WHEREAS, a commission appointed by Chief Judge Judith S. Kaye concluded in 2006 that a new, fully state-funded, statewide public defender system headed by an independent public defense commission is needed to guarantee the right to counsel in New York State, and

WHEREAS, this new system is to be truly independent, entirely and adequately state funded, authorized to provide mandated legal service providers statewide through regional offices and contracts with programs able to meet relevant standards, and required to engage in standards-based, ongoing oversight of mandated legal services, and

WHEREAS, bi-partisan legislation to implement the recommendations of the Kaye Commission has been introduced into both houses of the New York State Legislature, and

WHEREAS, the recommendations of the Kaye Commission also have the support of the Governor.

RESOLVED, that the Ulster County Legislature supports the creation by New York State of an independent public defense commission heading a statewide public defender system as recommended by the Kaye Commission and supported by the Governor and State Legislators of both parties, and

FURTHER RESOLVED, that the Ulster County Legislature agrees with the Kaye Commission that as to this much-needed public defense reform "the time for further study is over" and "the time for action is now," and

Resolution No. 381 November 14, 2007

Supporting The Creation Of An Independent Public Defense Commission And Statewide Public Defense System As Recommended By The Kaye Commission

FURTHER RESOLVED, that the Ulster County Legislature encourages the Chief Judge, the Governor, State Legislators of both parties, and others to continue efforts to bring about public defense reform, and

FURTHER RESOLVED, that the Clerk of the Ulster County Legislature shall forward copies of this resolution to New York State Chief Judge Judith S. Kaye, Governor Eliot Spitzer, New York State Comptroller's Office, Senate Majority Leader Joseph Bruno, Senate Minority Leader Malcolm Smith, Assembly Speaker Sheldon Silver, Assembly Majority Leader Ron Canestrari, Assembly Minority Leader James N. Tedisco, New York State Senators John J. Bonacic and William J. Larkin, Jr., New York State Assemblymen Kevin A. Cahill, Clifford W. Crouch, Peter Lopez and Thomas Kirwan, Chairs of the Codes and Judiciary Committees of the New York State Senate and Assembly, the New York State Association of Counties, and The Campaign for an Independent Public Defense Commission, and

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 32 NOES: 0
(Absent: Legislator Felicello)

FINANCIAL IMPACT:
NONE

1115