

1 **2021 NYSAC Fall Seminar**
2 **NYSAC Board of Directors**
3 **Resolution #1**

4 **Calling on the State of New York to Increase and Fully Fund County Law**
5 **18B Assigned Counsel Statutory Pay Levels**

6 **WHEREAS**, the United States Constitution established, and the Supreme Court
7 decision Gideon v. Wainwright clarified, that credible counsel must be provided for all
8 those accused of a crime, regardless of their ability to pay; and

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

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

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

20 **WHEREAS**, the New York State Legislature recognized that the State needed to
21 provide more funding and in 2017 passed historic legislation increasing state funding by
22 upwards of \$250 million per year to directly improve indigent defense services; and

23 **WHEREAS**, while counties are still funding the same amount, the State's 2017
24 legislative influx of funding has made New York State a leader in indigent defense
25 services; and

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

30 **WHEREAS**, all counties rely on the services of 18B attorneys to perform these services
31 to both handle the overflow of work as well as handling conflicts that come into the
32 public defender's office; and

33 **WHEREAS**, unfortunately, while the 2017 State legislation that helped vastly improve
34 the indigent defense system, one area that was not addressed was the pay rate of 18B
35 attorneys; and

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

4 **WHEREAS**, these rates have remained unchanged since 2004 and in that same time
5 period the United States has experienced wage growth of 58 percent for highly skilled
6 labor; and

7 **WHEREAS**, counties across the state have had difficulty in recent years attracting and
8 retaining quality 18B attorneys and the stagnant pay has been identified as a major
9 contributing factor; and

10 **WHEREAS**, without properly funding 18B attorneys, the work by the State to improve
11 indigent defense services could be in jeopardy of regressing.

12 **NOW, THEREFORE, BE IT RESOLVED**, that the New York State Association of
13 Counties (NYSAC) calls on the State to increase the 18B attorney hourly rate and to
14 include an annual adjustment; and

15 **BE IT FURTHER RESOLVED**, the State needs to fully fund this increase in keeping
16 with the logical reasoning of the Hurrell-Harring case as well as building on the State
17 legislature's historic 2017 legislation; and

18 **BE IT FURTHER RESOLVED**, that copies of this resolution be sent to the counties of
19 New York State encouraging member counties to enact similar resolutions; and

20 **BE IT FURTHER RESOLVED**, that NYSAC shall forward copies of this resolution to
21 the New York State Congressional Delegation, Governor Kathy Hochul, the New York
22 State Legislature, and all others deemed necessary and proper.