

1 **2023 NYSAC Legislative Conference**
2 **NYSAC Standing Committee on Intergovernmental Affairs**
3 **Resolution #5**

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

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

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

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

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

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

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

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

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

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43 **WHEREAS**, unfortunately, the 2017 state legislation did not address the pay rate for
44 18B 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
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5 **WHEREAS**, these rates have remained unchanged since 2004 and, in that same time
6 period, the United States has seen inflation rise by 57 percent; and
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8 **WHEREAS**, counties across the State have had difficulty in recent years attracting and
9 keeping quality 18B attorneys in their region, with stagnate pay reported as the major
10 contributing factor; and
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12 **WHEREAS**, without properly funding 18B attorneys, which will keep and attract
13 quality attorneys, the good work by the State to improve indigent defense services could
14 be in jeopardy; and
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16 **WHEREAS**, the 2023-24 Executive Budget includes an 18b pay rate increase of \$158
17 per hour in downstate NY and \$118 per hour rest of State, but fails to include any
18 funding for this increase; and
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20 **WHEREAS**, this increase without funding will cost county governments approximately
21 \$150 million annually, an amount that without state support threatens the quality of
22 county government services and cuts into the gains HH made throughout the defense
23 system; and
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25 **WHEREAS**, New York State Indigent Legal Services (NYS ILS) agrees that the rate
26 increase without state funding is detrimental to the public defense system and provided
27 Budget testimony that said, while we appreciate that the Executive budget includes a
28 proposal to increase the hourly rate paid to assigned counsel attorneys, the proposal
29 suffers from significant flaws that jeopardize the sustained progress of HH settlement
30 implementation and its extension statewide.”
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32 **NOW, THEREFORE, BE IT RESOLVED**, that the New York State Association of
33 Counties (NYSAC) calls on the State to increase the 18B attorney rate to equitable levels;
34 and
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36 **BE IT FURTHER RESOLVED**, the State needs to fully fund this increase in keeping
37 with the reasoning set forth in the Hurrell-Harring case, and to build on the State
38 Legislature’s historic 2017 legislation; and
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40 **BE IT FURTHER RESOLVED**, that copies of this resolution be sent to the counties
41 of New York State encouraging member counties to enact similar resolutions; and
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43 **BE IT FURTHER RESOLVED**, that NYSAC shall forward copies of this resolution to
44 the Governor of the State of New York, the New York State Legislature, and all others
45 deemed necessary and proper.