



NEW YORK STATE SENATOR

John A. DeFrancisco

## LEGISLATION SPONSORED BY SEN. DEFRANCISCO, ASM. FAHY TO ADDRESS INDIGENT LEGAL SERVICES BY COUNTIES

JOHN A. DEFRANCISCO January 21, 2016

| ISSUE: **LEGAL AID OR LEGAL SERVICES**

State Senator John A. DeFrancisco and Assemblymember Patricia A. Fahy today introduced legislation (S-6341/A-6202B) that will address funding of indigent legal services (ILS) by the State of New York. Their legislation would require the state to reimburse counties and cities for providing indigent legal service and will eliminate the geographic disparity that prevents New Yorkers from receiving effective representation.

In the landmark decision of *Gideon v. Wainwright* over 50 years ago, the Supreme Court of the United States, ruled it is a fundamental right of all persons in the United States to be represented by counsel in all criminal proceedings. The State of New York implemented this by mandating counties pay for their defense. A 2006 report chaired by the late former Chief Judge Judith Kaye labeled the state of public defense as an 'ongoing crisis.' Many counties do not have a system of supervising caseloads or standards to ensure comparable compensation for defenders.

This bill would provide counties with significant fiscal mandate relief by providing a full state fiscal takeover of indigent defense services in the next four years. The proposed legislation would ensure that first-rate legal representation for indigents not be

compromised and relieve county taxpayers from the state's responsibility.

"A class action lawsuit against the State resulted in a successful settlement which made the state responsible for providing public defense in five counties for the cost of indigent legal services. That settlement only applied to these five counties who brought suit. The purpose of this bill is to apply the principles of the settlement to every county, so that all counties will receive such a reimbursement. The settlement was based on the constitutional right of indigent individuals to have counsel in criminal cases. This bill would make sure all counties would have the resources to preserve this right," said Senator John A. DeFrancisco.

"This was a landmark ruling 50 years ago. Now is the time to fully realize this constitutional right here in New York State by providing equitable treatment for the accused and reducing the burden on counties. This may also lead to considerable cost savings if better legal representation leads to reduced pre-trial incarceration. I commend the governor for a host of recent criminal justice reforms – particularly with regard to youth. Providing access to adequate legal counsel in every county in New York State is a critical piece of this reform and we welcome the opportunity to work with Governor Cuomo to provide this in all counties of the state," said Assemblymember Patricia A. Fahy.

Counties are currently responsible for funding indigent legal services, in which many counties do not have a system of supervising caseloads nor standards to ensure comparable compensation for defenders. The bill will amend the law to provide for the state to take over full funding of the program in 2018 and relieve all counties of this fiscal mandate.

"I am very pleased to be a cosponsor of this vital mandate relief legislation that will help county governments and provide critical resources to help relieve demands on property taxpayers. This legislation will provide additional state resources that will allow local

governments and the criminal justice system to focus on the priorities facing their communities,” said Senator Patty Ritchie.

“I am proud to co-sponsor and offer my support for this important legislation. New York’s system of public defense is fractured and inefficient. Justice -- for all persons involved -- is best served by a system that has sustained and predictable funding. As in most states, the funding for this constitutionally-mandated service should be the responsibility of the state, and not county taxpayers,” said Assemblymember Joseph Lentol.

“All New Yorkers deserve an opportunity to have their case heard in court. Unfortunately, there has been a long history of inconsistent practices throughout New York State and it has had a negative impact on the financial health of our counties and more importantly an inconsistency in how individuals are defended in our court system.

I am supporting this bill because it is incumbent upon the state of New York to lead in providing each and every citizen an opportunity to a sound and fair defense,” said Assemblymember John T. McDonald III.

“I am pleased to stand with Assemblywoman Fahy, Senator DeFrancisco and my government colleagues in support of legislation that would require the state to live up to the promise of fair representation of indigent defendants dictated by the Supreme Court in *Gideon v. Wainwright* in 1963. With costs to providing defense for the poor escalating, this legislation provides a phased-in approach to rectifying New York's fragmented system of justice and helps the state meet its longstanding obligation to protect the rights of all residents, regardless of income or social status,” said Albany County Executive Daniel P. McCoy.

“County leaders are united in support of this legislation, and we thank Assemblywoman Fahy and Senate DeFrancisco for their leadership on this issue. Since the U.S. Supreme Court ruled that states must provide counsel for those charged with a crime regardless of ability to pay, New York has passed the cost and administration of this service to counties. Counties and New York City presently pay over \$360 million for Indigent Defense Services. Should uniform standards be implemented across the state, this will cost counties outside New York City an additional \$100 million to implement. Counties have provided this important service to the best of their ability. But now more than ever, we need the state’s commitment to improve the quality of this service. This is a state mandate the counties cannot afford, particularly as we comply with the state imposed property tax cap. This bill provides real and meaningful mandate relief,” said Stephen J. Acquario, executive director, New York State Association of Counties (NYSAC).

“Today, we are here to urge that the Legislature and the Governor take another important step in the right direction by enacting the Fahy/DeFrancisco bill, in order to provide state funding and ensure rules and standards for the provision of indigent defense services,” said David P. Miranda, Esq., president, the New York State Bar Association (NYSBA).

"St. Lawrence County appreciates the bipartisan, bicameral leadership displayed by Senator Ritchie, Senator DeFrancisco, Assemblywoman Fahy, Assemblyman Lentol and Assemblywoman Russell in seeking ways to not only assist struggling localities with alleviating the burdens of unfunded mandates but in seeking to ensure justice for all, as commanded by the sixth amendment to the United States Constitution. St. Lawrence County Legislators, led by Legislator Denesha, Legislator Lightfoot, Legislator Dann, Legislator Burke and County Administrator Doyle, have actively sought relief on this issue for the past year. It is clear that our State representatives have heard the call and are

answering with true solutions to the problem. The message they send is clear: While the Hurrell-Harring Settlement may have been limited to only five counties, New York State will not forget the other fifty-seven counties or their residents,” said St. Lawrence County Attorney Stephen Button.

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#### RELATED LEGISLATION

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### **2015-S6341**

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- Introduced
  
- ◦ In Committee Assembly
  - In Committee Senate
  
- ◦ On Floor Calendar Assembly
  - On Floor Calendar Senate
  
- ◦ Passed Assembly
  - Passed Senate
  
- Delivered to Governor
  
- Signed By Governor
  
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Requires state reimbursement to counties the full amount of expenditures for indigent legal services

January 04, 2016

In Senate Committee [Rules](#)

Sponsored by [John A. DeFrancisco](#)

Do you support this bill?