

Christopher A. JohnsonLegislator, 16th District

Chair, Committee of Appointments

**Committee Assignments**

Labor & Housing

Public Safety

To: Ben Boykin, Chairman of the Board of Legislators
Sunday Vanderberg, Clerk of the Board of Legislators

From: Christopher Johnson, Legislator, 16th District
Tyrae Woodson-Samuels, Legislator, 13th District

Date: May 3, 2021

Re: Independent Office of Assigned Counsel Legislation

Please refer the attached proposed Local Law, amending the Laws of Westchester County by adding a new Chapter 186 relating to the creation of the Independent Office of Assigned Counsel, to the appropriate committee(s) on the May 10, 2021 Westchester County Board of Legislators agenda.

While the County is required by New York State law to institute these changes, we firmly believe that the creation of the Independent Office of Assigned Counsel will better serve Westchester residents in need of legal services when they cannot afford it. The passage of this law will ensure access to fair, just, and free legal counsel to those that need it.

We continue to strive for equal access to services for all Westchester residents and believe that this is a positive step in achieving this goal.

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a communication from the County Attorney recommending adoption of “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 creating the Independent Office of Assigned Counsel.”

Your Committee is informed that New York State County Law (“County Law”) Article 18-B (“18-B”), sections 722-722-F, enacted in 1965, delegated to counties throughout New York State and New York City, the responsibility for providing counsel to indigent defendants in criminal and Family Court cases. While section 722 of the County Law set out the types of providers that counties could employ to fulfill the right to counsel, the statute provided no details as to the proper establishment of Assigned Counsel Programs. Therefore in the past, counties and bar associations in New York State created and maintained programs with little guidance.

As your Committee is aware, currently, Westchester County provides indigent legal services or Assigned Counsel pursuant to a Plan of Representation (“Plan”) approved by the New York State Administrator, first entered into in 1965, amended in 1975, and renewed on an annual basis, between the County, Legal Aid Society of Westchester County (“Legal Aid”) and the Westchester County Bar Association (“WCBA”). *See* Chap. 878, Laws of 1965. The Plan provides for legal representation by Legal Aid attorneys and by private attorneys (“18-B Panel”) for indigent clients. Membership on the 18-B Panel is coordinated by the WCBA, who reviews applications and certifies to Legal Aid a list of attorneys who may be appointed to represent indigent defendants in the criminal and Family Courts in Westchester County. Legal Aid as

“administrator” of the Plan, promulgates rules and regulations for the conduct of the Plan and coordinates the assigned counsel assignments of its own attorneys as well as the 18-B Panel. Legal Aid also applies for funding from New York State to improve the quality of indigent legal representation in the County. The County is responsible for the payment of the 18-B Panel attorneys. Vouchers for payment of attorneys on the 18-B Panel are first submitted to the Court for approval, then to Legal Aid for review and processing and finally to the County Finance Department for payment.

Your Committee is advised that Westchester County, along with other counties throughout New York State have or are in the process of amending their Plans based upon legislation enacted by New York State mandating reforms in the provision of indigent legal services in New York. These reforms are the result of a settlement of a lawsuit brought in 2007 by the New York Civil Liberties Union against New York State alleging that the State had systematically and structurally denied meaningful and effective representation to defendants entitled to publicly funded representation in violation of their Sixth Amendment right to counsel. *Hurrell-Harring v. State of New York*; 15 N.Y.3d 8 (2010); 930 N. E. 2d 217 (N.Y. 2010). As a result of this litigation, in 2010, the New York State legislature enacted New York State Executive Law (“Executive Law”) §§ 832 and 833 respectively, authorizing the creation of the New York State Office of Indigent Legal Services (“ILS”), and a 9-member Indigent Legal Services Board (“ILS Board”). The express statutory purpose of both ILS and the ILS Board “is to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law.” *See*, Executive Law §§ 832(1), 833 (1).

Your Committee is further advised that in October 2014, the parties in the *Hurrell-Harring* case reached a Settlement Agreement that mandated New York State to remedy four major areas of deficiency in the provision of indigent legal services: the lack of counsel at arraignment; excessive caseloads and inadequate support services; lack of quality control and oversight structures; and the failure to have a uniform standard of eligibility for the assignment of counsel. The Settlement, which required the state to provide funds for reform, applied only to the five counties involved in the lawsuit and not to any of the other fifty-two upstate counties or to New York City. On January 17, 2017, however, Governor Cuomo proposed the extension of the *Hurrell-Harring* reforms throughout New York State at state expense. ILS was given responsibility to develop plans for the statewide reforms to the provision of assigned counsel and to oversee their implementation. On April 10, 2017, the final FY 2018 New York State budget included two statutory amendments. Specifically, County Law § 722-e, which since 1965 had required counties to fund Assigned Counsel, was amended to specify that any costs of implementing the ILS reform plans “shall be reimbursed by the state to the county or city providing such services.” Further, the statute provides that the “state shall appropriate funds sufficient to provide for the reimbursement required by this section.”

Your Committee notes that a new subdivision of the Executive Law § 832 (4), entitled “Additional Duties and Responsibilities,” gave ILS the authority to craft and implement plans for statewide implementation that provide counsel at arraignment, caseload relief, and quality improvement. Pursuant to this mandate, ILS has been meeting with public defense providers and local government officials in the counties and New York City to create implementation plans that

meet the mandates of the Executive Law, determine appropriate interim steps, and estimate the cost of full compliance with those plans in the coming years. Accordingly, to aid counties and to ensure quality representation, ILS, in consultation with the ILS Board, promulgated Standards for Establishing and Administering Assigned Counsel Programs (“Standards”, attached hereto), pursuant to Executive Law § 832. These Standards encompass criminal defense, family law, and appellate representation of assigned counsel clients. With Statewide implementation of reforms in compliance with the Standards, 41 counties and New York City now operate with independent administrators, and all counties are developing enhanced structure and resources for their assigned counsel attorneys.

Your Committee is informed that the County’s Plan currently relies upon Legal Aid to provide attorneys for representation of indigent clients, administer the 18-B panel of private attorneys to represent indigent clients, apply for all funding from the State and process the vouchers to forward to the County for payment of attorneys. ILS strongly believes that this arrangement clearly creates a conflict of interest for Legal Aid; in 2020, the then Presiding Justice of the Appellate Division, Second Department, indicated the necessity for the County to create a new Plan for an Assigned Counsel program that would meet the requirements of not only New York State law but the Standards as well. Over the past several months, I and the Chief Deputy County Attorney have met and consulted with ILS, WCBA and Legal Aid to establish a new program for the provision of assigned counsel in Westchester County. We have drafted proposed legislation to create an Independent Office of Assigned Counsel (“Office”) that complies with New York State law and the Standards issued by ILS. Moreover, on

February 25, 2021, as required by County Law §722, ILS formally approved the County's new plan for provision of Indigent Legal Services contained in the proposed legislation creating the Office.

Your Committee is further informed that pursuant to the proposed legislation, the Office will be administered by an Assigned Counsel Administrator with the advice and consent of an 11 member independent Assigned Counsel Board of Directors. The Board of Directors will be appointed by the County Executive on the recommendations of various Bar Associations and confirmed by this Honorable Board. All of the administrative duties currently carried out by Legal Aid will be assumed by the Office. The County will contract with the WCBA and other appropriate agencies to provide specific services including review of attorney applications for certification and recertification to the 18-B panel, as well as training, investigation, expert witnesses, social work/sentencing advocacy, quality control, or second chair and mentoring programs. Moreover, the Assigned Counsel Administrator will be responsible for applying to the State for the Distributions of Funding and Grants to fund the Office. As with any County Department or Agency, the County Board will approve the Budget and any contracts of the Office as required by law.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ - 2021

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2021, entitled “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 creating the Independent Office of Assigned Counsel.” The public hearing will be held at __.m. on the _____ day of _____, 2021 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.