

6 Section 1. Purposes. The purpose of this act is to establish a public
7 defense commission as a public benefit corporation responsible for eval-
8 uating the current system of public defense services throughout the
9 state by providing advice and making recommendations to:

10 (a) ensure that public defense representation is provided within a
11 truly independent atmosphere free from political or judicial influence
12 and conflicts of interest;

13 (b) ensure that state funds for public defense services are managed in
14 an efficient and cost-effective manner without sacrificing quality of
15 representation;

16 (c) ensure that public defense services are delivered by qualified and
17 competent attorneys in a manner that is fair, effective and uniform;

18 (d) advance policies, procedures and standards for the delivery of
19 public defense services that comply with national, ethical and state
20 professional standards; and

21 (e) improve oversight of the delivery of public defense services by
22 generating reliable statistical information and data needed to evaluate
23 the services provided and funds expended.

24 § 2. Definitions. As used in this act:

25 (a) "Chief defender" means the person in charge of the day to day
26 operations for an entity operating as a public defense service provider
27 in a locality in the state.

28 (b) "Client" means any person who receives or has received public
29 defense services.

30 (c) "Client community" means clients, their families, local neighbor-
31 hoods in which a significant number of clients live and organizations
32 dedicated to providing support or advocacy to clients, their families
33 and local neighborhoods.

34 (d) "Commission" means the 13 members comprising the public defense
35 commission.

36 (e) "Court" means a local criminal court, supreme court, superior
37 court, family court, surrogate's court or appellate court.

38 (f) "Eligible person" means any person eligible to receive public
39 defense services.

40 (g) "Local defenders" means attorneys or other service providers
41 delivering public defense services.

42 (h) "Locality" means any region in New York, including a county, a
43 part of a county or a group of counties or parts of counties except that
44 within a county in the city of New York such term shall mean the city of
45 New York.

46 (i) "Public defense services" means publicly-financed legal represen-
47 tation, including the services of attorneys and all investigative and
48 necessary ancillary services provided to persons unable to afford them
49 and suspected of, accused of, charged with, or convicted of, committing
50 a felony, misdemeanor, or the breach of any law of this state or of any
51 law, local law or ordinance of a political subdivision of this state,
52 other than one that defines a "traffic infraction," for which a sentence
53 to a term of imprisonment is authorized upon conviction thereof, includ-
54 ing representation at the pre-trial, trial, appellate and post-convic-

1 tion stages in criminal cases, or entitled to representation under
2 section 262 of the family court act or otherwise entitled to public
3 representation in family court, supreme court, surrogate's court, parole
4 proceedings and related appeals under the executive law, in classifica-
5 tion proceedings under article 6-C of the correction law and related
6 appeals and in all other cases where counsel is or may be provided for
7 by law.

8 (j) "Public defense service provider" or "service provider" means an
9 entity or individual authorized to provide public defense services.

10 § 3. Public defense commission - established. (a) There is hereby
11 established the New York state public defense commission, a body corpo-
12 rate constituting a public benefit corporation.

13 (b) The commission shall be an autonomous body housed within the
14 unified court system for budgetary purposes only; the budget for the
15 commission shall be a part of the judiciary's annual budget submission
16 but the commission shall have the final authority with respect to prepa-
17 ration of its budget and representation of matters pertaining to the
18 commission before the governor and the state legislature; consequently,
19 nothing in this section shall be deemed part of the itemized estimates
20 of the financial needs of the judiciary for which approval by the court
21 of appeals and certification by the chief judge of the court of appeals
22 is required pursuant to section 1 of article VII of the New York state
23 constitution and paragraph (a) of subdivision 1 of section 212 of the
24 judiciary law; neither the chief administrative judge nor any other
25 official within the unified court system shall reduce or modify the
26 budget of the commission or use funds appropriated to the commission
27 without the approval of the commission.

28 (c) The commission shall operate independently for the improvement of
29 the public defense system and shall be free from judicial or political
30 interference; the commission shall in all respects exercise its
31 prescribed powers independently of the chief administrative judge of the
32 unified court system but may consult with the chief administrative judge
33 who shall, upon the request of the commission, assist the commission in
34 preparing and presenting to the governor and state legislature the
35 commission's budget.

36 (d) The budget for the commission shall include, subject to available
37 appropriations, the salaries of all commission personnel, an allocation
38 for office expenses, furniture, computers and an allocation for such
39 additional items as are necessary for the commission to perform its
40 functions pursuant to this act including such services as may be
41 provided pursuant to subdivision (q) of section six of this act; such
42 costs may be offset by the use of centralized services such as payroll,
43 human resources, accounting, information technology or other services
44 determined by the commission and the chief administrative judge to be
45 more efficiently provided by the unified court system.

46 (e) The commission will be performing an essential governmental func-
47 tion in the exercise of the powers conferred upon it by this act and the
48 commission shall not be required to pay taxes or assessments upon any of
49 the property acquired by it or under its jurisdiction and control.

50 (f) All contributions made to the commission whether by gift, devise,
51 grant, donation or bequest shall qualify as deductions in computing the
52 net taxable income of the donor for the purpose of income tax imposed by
53 the state or any political subdivision thereof.

54 (g) The commission shall protect the confidences and secrets of
55 clients, including clients of local defenders, in accordance with law
56 and the disciplinary rules of the code of professional responsibility

1 set out in part 1200.19 of title 22 of the New York codes, rules and
2 regulations. Notwithstanding any other provision of the law to the
3 contrary, no record or report shall be deemed deficient because of the
4 omission of information, the provision of which would result in the
5 disclosure of any such confidences or secrets, or would otherwise
6 compromise the interest of any client.

7 (h) Notwithstanding any other provision of law to the contrary, the
8 commission shall be exempt from the application of any provision of
9 articles 6 and 7 of the public officers law.

10 § 4. Public defense commission - appointments and qualifications. (a)
11 The commission shall be composed of 13 members who shall be selected
12 with regard for the geographic, racial, ethnic and gender makeup of the
13 state and the cultural diversity of the state's public defense clients.
14 A person appointed to the commission must have a demonstrable commitment
15 to quality representation of lower income people, to improving the
16 public defense system and to the principle of independence of the
17 defense function. While serving on the commission, no member of the
18 commission shall be a judge, prosecutor, public defense provider, law
19 enforcement officer, county attorney, attorney general, United States
20 attorney, or employee thereof, or a full time employee of the state or
21 any political subdivision, or of any board, commission, agency or
22 authority of the state or any political subdivision thereof.

23 (b) The members of the commission shall be appointed by the governor
24 as follows:

25 (1) three attorneys from nominees submitted by the chief judge of the
26 state court of appeals as follows:

27 (i) one from not less than three nominees with substantial experience
28 in the handling of criminal trials or appeals;

29 (ii) one from not less than three nominees with substantial experience
30 in the handling of family-related trials or appeals; and

31 (iii) one from not less than three nominees drawn from a list of indi-
32 viduals recommended to the chief judge by the deans of the state's law
33 schools;

34 (2) one attorney with a demonstrable commitment to improving the qual-
35 ity of public defense representation from not less than three nominees
36 submitted by the temporary president of the state senate;

37 (3) one attorney with a demonstrable commitment to improving the qual-
38 ity of public defense representation from not less than three nominees
39 submitted by the speaker of the state assembly;

40 (4) one attorney with a demonstrable commitment to improving the qual-
41 ity of public defense representation who has substantial experience in
42 the delivery of public defense services from not less than three nomi-
43 nees submitted by the minority leader of the state senate;

44 (5) one attorney with a demonstrable commitment to improving the qual-
45 ity of public defense representation who has substantial experience in
46 adult respondent representation in family court from not less than three
47 nominees submitted by the minority leader of the state assembly;

48 (6) one attorney in private practice with a demonstrable commitment to
49 improving the quality of public defense representation from not less
50 than three nominees submitted by the New York State Bar Association;

51 (7) one person with a demonstrable commitment to improving the quality
52 of public defense representation from not less than three nominees
53 submitted by the New York State Defenders Association;

54 (8) one person with a demonstrable commitment to improving the quality
55 of public defense representation from not less than three nominees
56 submitted by the New York State Association of Criminal Defense Lawyers;

1 (9) one person who is a member of an organization that advocates on
2 behalf of a racial minority population in New York from not less than
3 three nominees submitted by the NAACP Legal Defense and Educational
4 Fund;

5 (10) one person who is a member of an organization that advocates on
6 behalf of a racial minority population in New York from not less than
7 three nominees submitted by the Puerto Rican Legal Defense and Education
8 Fund; and

9 (11) one person from not less than three nominees submitted by The
10 Fortune Society with experience as a consumer of public defense services
11 who, having been exonerated or having paid his or her debt to society by
12 service of a sentence, has demonstrated a commitment to the improvement
13 of legal services for those unable to afford counsel.

14 (c) The appointment of members of the New York state public defense
15 commission shall be completed within 45 days of the effective date of
16 this act.

17 § 5. Public defense commission - terms of office, designation of
18 chairperson, re-appointment, vacancies and compensation. (a) Members of
19 the commission shall serve terms of four years; provided, however, that
20 the members initially appointed shall serve the following terms:

21 (1) the three members appointed pursuant to paragraphs 9, 10 and 11 of
22 subdivision (b) of section four of this act, one year;

23 (2) the three members appointed pursuant to subparagraphs (ii) and
24 (iii) of paragraph 1 and paragraph 6 of subdivision (b) of section four
25 of this act, two years;

26 (3) the three members appointed pursuant to subparagraph (i) of para-
27 graph 1 and paragraphs 7 and 8 of subdivision (b) of section four of
28 this act, three years; and

29 (4) the four members appointed pursuant to paragraphs 2, 3, 4 and 5 of
30 subdivision (b) of section four of this act, four years.

31 (b) Members of the commission shall select by majority vote a chair-
32 person from among their ranks for a term of two years.

33 (c) Members of the commission may be re-appointed to additional terms
34 and shall serve until their successors are appointed and qualified.

35 (d) Vacancies on the commission shall be filled promptly and for the
36 remainder of the term in the manner provided for by the original
37 appointment.

38 (e) Members of the commission shall serve without pay but shall be
39 reimbursed for their reasonable, actual and necessary expenses incurred
40 in the performance of their duties.

41 § 6. Public defense commission - general powers, duties and responsi-
42 bilities. The commission shall have the power, duty and responsibility:

43 (a) to monitor the administration of public defense services through-
44 out New York state;

45 (b) to engage in a fair and unbiased evaluation of existing public
46 defense systems and service providers based on statutory requirements
47 and national, ethical and state professional standards including the
48 "Standards for Providing Mandated Representation" as adopted by the New
49 York State Bar Association's House of Delegates on April 2, 2005 and the
50 "Standards for Providing Constitutionally and Statutorily Mandated Legal
51 Representation in New York State" as adopted by the New York State
52 Defenders Association's Board of Directors on July 25, 2004;

53 (c) to calculate the cost of existing public defense services, includ-
54 ing costs to localities and the state, and evaluate:

1 (1) the cost to assure that public defense services comply with
2 national, ethical and state professional standards and best practices;
3 and

4 (2) the cost to operate the current system of delivery of public
5 defense services at a level in compliance with national, ethical and
6 state professional standards compared to the cost of adopting a plan for
7 state financing and delivery of public defense services;

8 (d) to conduct a comparison of all resources made available to support
9 prosecution and related investigative services, including but not limit-
10 ed to, county and district attorneys, parole revocation specialists,
11 child protective agencies and presentment agencies under the family
12 court act, with the resources made available to support public defense
13 services;

14 (e) to develop a strategic plan for the delivery and funding of trial,
15 appellate, family and conflict public defense services throughout the
16 state and evaluate that plan on an ongoing basis;

17 (f) to establish the qualifications, duties and compensation for the
18 staff of the commission; appoint, evaluate and terminate the employment
19 of commission personnel;

20 (g) to establish an advisory committee consisting of chief defenders,
21 local defenders, representatives from voluntary organizations such as
22 bar associations, other criminal justice professionals and client commu-
23 nity representatives to advise the commission on its evaluation of the
24 state defender system;

25 (h) to prepare and submit a preliminary report by October 31, 2008,
26 and a final report by March 31, 2009 to the governor, the temporary
27 president of the senate, the speaker of the assembly, the minority lead-
28 er of the senate, the minority leader of the assembly, the chief judge
29 of the court of appeals and the chief administrative judge of the
30 unified court system which shall:

31 (1) describe, evaluate and analyze the needs of the existing public
32 defense system;

33 (2) recommend statutory changes, including changes in the criminal
34 procedure law, the penal law, the family court act and related statutes
35 and court rules which may be appropriate for the improvement of the
36 administration of justice, the rehabilitation and re-entry of offenders
37 and other related objectives; and

38 (3) recommend the best means by which the state can assume the opera-
39 tion, management, provision and supervision of public defense services.

40 Thereafter, it shall submit a comprehensive report on the system of
41 providing public defense services in the state of New York consistent
42 with the purposes of this act on or before the thirtieth day of November
43 of each year to the governor, the temporary president of the state
44 senate, the speaker of the state assembly, the minority leader of the
45 senate, the minority leader of the assembly, the chief judge of the
46 court of appeals and the chief administrative judge of the unified court
47 system;

48 (i) to sue and be sued and to participate in actions and proceedings,
49 whether judicial, administrative, arbitratative or otherwise;

50 (j) to have a corporate seal, to alter such seal at its pleasure and
51 to use it by causing it or a facsimile to be affixed or impressed or
52 reproduced in any manner;

53 (k) to purchase, receive, take by grant, gift, devise, and bequest or
54 otherwise lease, otherwise acquire, own, hold, improve, employ, use, and
55 otherwise deal in and with real or personal property, or any interest
56 therein, wherever situated;

1 (l) to offer participation in the New York state and local employees
2 retirement system for all its officers and employees and to establish
3 and carry out other incentive and benefit plans for any and all of its
4 officers and employees, subject to the applicable provisions of article
5 14 of the civil service law;
6 (m) to make, adopt, amend, enforce and repeal rules for its governance
7 and internal management and personnel practices;
8 (n) to make and alter by-laws for its organization and management;
9 (o) to designate the depositories for its money;
10 (p) to establish its fiscal year;
11 (q) to, at the discretion of the commission, contract with one or more
12 institutions of higher education and/or one or more other not-for-profit
13 entities with expertise in evaluating public defense services for the
14 purposes of assisting the commission to fulfill the purposes of this
15 act; and
16 (r) to do all things necessary, convenient or desirable, including
17 ancillary and incidental activities, to carry out its purposes and for
18 the exercise of the powers granted in this act.
19 § 7. Assistance by state offices, departments, boards, divisions and
20 commissions. At the request of the commission, all other state offices,
21 departments, boards, divisions and commissions shall render such infor-
22 mation, assistance and cooperation as shall be within their legal
23 authority in the furtherance of the purposes of this act.
24 § 8. This act shall take effect immediately.