

Resolution of the Board of Trustees

of

The Neighborhood Defender Service, Inc.

Regarding the Recommendations of the

**Kaye Commission on the Future of Indigent Defense
Services in New York State**

for the creation of an

Independent State Public Defense Commission

Whereas the Neighborhood Defender Service (NDS) was created in 1990, in part, in response to some of the deficiencies that existed in New York City's provision of defense services in the mid and late 1980s; and

Whereas NDS has since its inception been active at the local, state and national level in efforts to improve the provision of indigent defense services; and

Whereas Judith Kaye, the Chief Judge of the New York Court of Appeals, New York's highest court, in February 2004 created the Kaye Commission on the Future of Indigent Defense Services in New York (hereinafter Kaye Commission), to examine the existing methods of funding indigent defense services, evaluate the effectiveness of various defense providers throughout the state and assess the quality of representation afforded indigent criminal defendants; and

Whereas the Kaye Commission issued its final report in June 2006, in which it found New York State's current structure of county-based provision of indigent defense services results in an un-funded mandate on the counties leading many counties to shortchange defense services in the name of budget savings; that the current system is marked by excessive caseloads, a lack of training and support services, and minimal client contact and investigation of cases; and the lack of statewide standards and the reliance on counties to fund defense services for the poor undercuts the very independence of those services central to the right to a fair trial and effective defense guaranteed by the state and federal constitutions; and

Whereas while much of the Commission's report focused on the particularly troubling state of defense service in upstate New York, it noted that many problems existed in New York City as well; and

Whereas in courtrooms throughout every corner of our state, including New York City, there continues to be, on a daily basis, the denial of true access to justice as a result of inadequately funded, politically vulnerable, and/or poorly structured defender programs; and

Whereas the lack of statewide uniformity, from funding, to staffing and training, to case handling, has led to widely disparate levels of service; and

Whereas the lack of enforceable caseload standards deny defender managers the tools they need to control workload and caseload by being able to demand more funds or refuse new cases if those standards are exceeded; and

Whereas to address these systemic deficiencies, the Kaye Commission recommended the creation of a permanent Independent Public Defense Commission, and for that commission to establish the posts of chief defender, regional defenders, and deputy defenders for appeals and conflict defense to oversee a new state-funded system; and

Whereas the proposed commission would create a state-funded public defense structure throughout the state, with regionally-based public defenders or contracts with competent existing providers; develop statewide standards, and an enforcement mechanism for assessing compliance with those standards; and establish a regimen of data collection to assess the effectiveness of defense services for poor defendants and compliance with the standards; and

Whereas the Kaye commission report makes clear that within the context of state funding and oversight, the Independent Public Defense Commission would have the authority to continue utilizing competent current providers, such as NDS, who meet standards promulgated by the commission; and

Whereas by establishing independent oversight, institutionalizing accountability, promulgating meaningful standards, and increasing funding, an Independent Public Defense Commission could help to narrow the chasm between private and public representation; and

Whereas NDS has been a leader in rethinking how best to provide criminal defense services to those who are unable to afford private counsel, and continuously strives to deliver those services in a similar manner as one would receive were he able to hire an attorney; and

Whereas the Board of Trustees of the Neighborhood Defender Service believes a statewide entity, as recommended by the Kaye Commission in its June 2006 Report, the independence of the commission itself, and the standards that such a commission develops, is key to successful improvement of indigent defense services throughout New York State;

Be It Resolved that the Board of Trustees of the Neighborhood Defender Service, Inc. hereby endorses and supports in principle the recommendations of the Kaye Commission regarding the creation of an Independent State Public Defense Commission and the creation of a state defender system.

June 22, 2007