



**AMENDED STATEMENT BY
THE NEW YORK STATE BAR ASSOCIATION
TO
THE JOINT LEGISLATIVE HEARING ON THE EXECUTIVE PUBLIC PROTECTION
AND GENERAL GOVERNMENT ARTICLE VII PROPOSAL**

**FEBRUARY 7, 2023
ALBANY, NY**

NYSBA has been the voice of the legal profession in New York State for more than 140 years and is the largest voluntary state bar association in the United States. With members practicing in every county in the State, every state in the United States and throughout the world, NYSBA's mission includes shaping the development of the law and facilitating the administration of justice. NYSBA has a long history of advocating for access to justice, equality and fairness of the justice system.

NYSBA has historically advocated for an increase in assigned counsel rates throughout New York State. We believe that the rate should be consistent with the federal rate. Assigned counsel attorneys are court appointed attorneys representing indigent clients facing criminal charges, as well as children in a myriad of complex family law matters. NYSBA and its members are committed to the fundamental principle that qualified private counsel must be available to children and indigent adults in New York's Family and Criminal Courts, and the compensation rate the State sets for participants in the assigned counsel program must be sufficient to ensure that their clients receive the meaningful and effective legal representation to which they are constitutionally entitled. The NYSBA compliments the many legislative leaders who have labored to try and make this a reality in recent years.

The State has a constitutional and statutory obligation to ensure that children and indigent adults receive meaningful and effective legal representation in Family and Criminal Court proceedings. Yet, assigned counsel rates for attorneys representing children and indigent clients in New York have remained stagnant for nearly two decades. The inadequacy of the rates has resulted in an alarming shortage of assigned counsel available to represent individuals who are entitled to legal representation at their most vulnerable times. **There are not enough attorneys available to represent indigent clients and children due to inadequate compensation rates.**

The hourly rates for attorneys appointed under Article 18b of the County Law, commonly referred to as "18b attorneys," have remained at \$75 for felony cases and \$60 for misdemeanors since 2004. In that same time, the salary for assigned counsel in the federal courts has been raised 15 times and is more than double the New York State rate at \$164 dollars an hour. Attorney for Children rates have similarly remained unchanged over the last 17 years at \$75 per hour, with the last increase being enacted as part of the 2003 budget. The pandemic has worsened the financial situation for the most vulnerable New Yorkers – resulting in increased individuals qualifying for assigned counsel; meanwhile, the number of available attorneys has dropped, largely due to the woefully deficient rates.

This has led to:

- Repeated delays in court appearances and hearings. The declining number of attorneys financially able to take on cases results in clients suffering prolonged waiting period before their legal matters are resolved, including remaining incarcerated or separated from family.
- Individuals in need of immediate relief proceeding *pro se* and making critical legal decisions, without counsel.
- Reduction in experienced attorneys serving as assigned counsel, especially in upstate counties where the disparities are even more severe.
- Additional burdens on the court system, threatening its ability to comply with legal mandates and making expediting court review of urgent matters, more difficult if not impossible.

The time to right this injustice is past due. Although NYSBA recognizes that the Governor has advanced a proposal to increase assigned counsel rates, the language in Part P of the Public Protection and General Government Article VII (“PPGG”) bill fails to fix the problem. Most notably, the PPGG sets lower rates for upstate assigned counsel attorneys (\$119) compared to downstate counsel (\$158/hour), creating inequitable tiers of justice based on geography. This will only serve to increase the justice gap across our state. This arbitrary division of criminal justice division in our state;

- fails to create a rate consistent to the federal rate (\$164/hour)
- imposes unworkable caps on total compensation for time expended providing representation based on a geographic divide; and
- fails to expressly provide that the State will be funding the increased rates to avoid imposing additional obligations on the counties.

In lieu of the language contained in the PPGG, the NYSBA urges the Legislature to include the language currently introduced as S.1777 (Bailey)/A.240 (Magnarelli). That legislation should guide how to best resolve the current assigned counsel issues, in order to address intolerable impediments to access to justice for New York’s most vulnerable and underserved populations. The Bailey/Magnarelli bill rightly includes:

- the same increased rates in all counties throughout New York State;
- clarifying language that the State covers the cost of the increase; and
- an annual adjustment for the rates.

With respect to bail reform in New York State NYSBA is deeply concerned by the rollbacks in bail reform that the Governor has put in the state budget; it is a significant policy matter that requires a full and fair debate. It is critical that the law is not changed in a manner that will result in more New Yorkers – particularly Black and brown people – incarcerated for longer periods of time for offenses simply because they are too poor to afford bail.

NYSBA supports alternatives to cash bail including but not limited to unsecured and partially secured bonds, as well as (i) simplifying and making available forms compliant with the Criminal Procedure Law facilitating secured, partially secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and

amending the Criminal Procedure Law to provide that the court may not impose financial conditions upon a defendant in a criminal action or proceeding unless the defendant is charged with a crime of violence or there is a likely risk that the defendant will not appear in court.

Regarding the issue of solitary confinement of persons incarcerated in New York State jails and prisons NYSBA supports restricting the use of long-term solitary confinement, by adopting clear and objective standards to ensure that prisoners are separated from the general prison population only in very limited and very legitimate circumstances and only for the briefest period and under the least restrictive conditions practicable.

New York State should continue to support the adoption of stringent criteria, protocols and safeguards for separating violent or vulnerable prisoners, including clear and objective standards to ensure that prisoners are placed in solitary confinement only in limited and legitimate circumstances for the briefest period and under the least restrictive conditions practicable; and auditing the current population in extreme isolation to identify people who should not be in the special Housing Unit, transitioning them back to the general prison population, and reducing the number of special Housing Unit beds accordingly. NYSBA urges that the imposition of long-term solitary confinement on persons in custody beyond 15 days be prohibited.

The New York State Bar Association is committed to resolving these important access to justice issues during the current budget process and looks forward to working with the Legislature to achieve this common goal. If you have any questions, please contact our General Counsel, David P. Miranda, via dmiranda@nysba.org.