



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

VETO # 306

December 31, 2016

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 8114, entitled:

“AN ACT to amend the county law, the executive law and the state finance law, in relation to indigent defense services”

NOT APPROVED

The provision of quality criminal defense by the government to individuals who cannot otherwise afford counsel is of paramount importance, as the United States Supreme Court ruled in *Gideon v. Wainwright* and its progeny. In 2014, my Administration successfully negotiated an agreement in *Hurrell-Harring et al. v. State of New York et al.*, a lawsuit filed against the State and various counties based upon an alleged failure to provide the necessary level of indigent defense services in those counties, to bring true reform to public defense systems that were failing. These improvements, which were widely heralded as groundbreaking for the State, include ensuring all indigent criminal defendants have counsel at arraignment, establishing new caseload standards so that attorneys providing mandated relief devote sufficient attention to each case, and implementing initiatives to improve indigent defense.

The groundbreaking advances in those five counties can, and should, be extended to the rest of the State. As drafted, however, this bill would not accomplish this goal.

Rather than clearly extending the settlement terms of *Hurrell-Harring* to all counties throughout the State, this bill would require the State to ultimately expend more than \$800 million dollars every year – of which nearly \$650 million is entirely unrelated to the *Hurrell-Harring* agreement – to fully reimburse counties for all expenses associated with non-criminal legal defense work, including legal services in family court and surrogate court. This bill would do little more than transfer to the taxpayers of this State an entirely new obligation to pay for any and all existing expenses related to general defense legal work, far beyond legal representation of indigent criminal defendants.

I cannot increase the taxes of every taxpayer in this State to fund existing and future legal defense work in counties and with no accountability measures, nor can I dramatically increase the State's financial burden outside of the State's budgetary process or its financial plan. This bill blindly shouldered the State with an \$800 million dollar annual expense without any funding or plan to support it. We have successfully returned this State to fiscal solvency from a record \$10 billion dollar deficit 6 years ago. We owe it to all taxpayers, including low income New Yorkers with limited resources, to continue our fiscal responsibility, while we continue to advance meaningful reforms in a variety of areas.

The need for reform in the area of “indigent defense” is clear. To that end, I proposed modifications to the Legislature that would have resulted in the State funding one hundred percent of the costs necessary to extend the reforms in the *Hurrell-Harring* settlement to all of the State's counties and the City of New York, with appropriate fiscal oversight through the Division of Budget. That proposal would have guaranteed that counsel at arraignment, caseload relief reform, and quality improvements would not just be critical progressive reforms realized only in a handful of the State's counties. It also would have required appropriate oversight and reporting to ensure that the counties are properly implementing such reforms.

Unfortunately, the Legislature did not adopt those modifications, highlighting a basic and fundamental misunderstanding within the Legislature as to the true, intended purpose of this bill. The Legislature framed this bill as “indigent defense” bill. It is not. This bill is nothing more than a backdoor attempt to shift costs from the counties to state taxpayers under the guise of indigent defense. Politics and confusion should not drive policy, and certainly not an issue of this importance. *Gideon v. Wainwright* is a cornerstone of our criminal justice system and we must ensure the principles advanced in that decision are advanced in every criminal court in this State. And I am committed to that principle. But we cannot use *Gideon* as a ploy for financial redistribution of existing local expenses that have nothing to do with *Gideon*. Rather, the bill functions as a simple cost shift to taxpayers, proven by the fact that there is absolutely no funding stream to pay for it. Accordingly, I am therefore constrained to veto this bill.

In the coming months, my administration will introduce a plan to bring these groundbreaking reforms to the rest of the State. As we attempted to do through this process, my administration will work to ensure that counsel at arraignment, caseload standard reform, and quality improvements are extended throughout the State, with appropriate tools to ensure accountability and results. We look forward to working with the Legislature to achieve that goal.

This bill is disapproved.