



NEW YORK
CITY BAR

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August 1, 2016

Honorable Andrew Cuomo
Governor
State of New York
Executive Chamber
Capitol Building
Albany, New York 12224

**Re: A.10706 (AM Fahy) / S.8114 (Sen. DeFrancisco)
Support the Full Funding of Indigent Defense Services**

Dear Governor Cuomo:

The New York City Bar Association (the “City Bar”) and its Task Force on Mass Incarceration (“Mass Incarceration Task Force”) urge you to sign bill A.10706/S.8114 into law to provide for the full funding of indigent defense services in New York. This bill received unanimous support in both houses of the Legislature.

With more than 2.3 million people behind bars, the United States has the highest incarceration rate in the world. In September 2015, recognizing that our country is at a critical juncture in the debate about mass incarceration, the City Bar formed the Mass Incarceration Task Force—comprised of prosecutors, defense attorneys, judges, and other experts on criminal law—to explore how to best reduce the world’s highest incarceration rate, with a focus on our home state of New York.

It is clear that reducing incarceration in New York will require a multifaceted and multi-year effort. The first and most basic step towards this goal is to ensure that all indigent defendants accused of crimes in New York are provided meaningful and effective legal representation. As former Attorney General Eric Holder has remarked, “America’s indigent defense systems . . . exist in a state of crisis.”¹ Around the country, underfunded public defense services result in unacceptable costs: wrongful convictions and unjust sentences, the loss of public trust in the legal system, and significant amounts of tax payer dollars wasted on retrials,

¹ Eric Holder, *Attorney General Eric Holder Speaks at the Justice Department’s 50th Anniversary Celebration of the U.S. Supreme Court Decision in Gideon v. Wainwright* (March 15, 2013), available at <https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-justice-departments-50th-anniversary-celebration-us>.

appeals, and the incarceration of innocent people.² As you have rightly acknowledged, New York State “can’t allow the inequities in the justice system to become even more of a crisis than it already is.”³ State legislators have aimed to address this crisis by unanimously passing bill A.10706/S.8114. This bill, passed with strong bipartisan support, will require the State to reimburse every county the full amount of its expenditures for providing indigent defense services. It would also require statewide standards and regulations that ensure every person has an attorney at arraignment, that regulate the caseloads of public defense attorneys so as to allow for meaningful and effective representation, and that improve the overall quality of court-appointed representation.

The right to counsel in criminal proceedings is guaranteed by the U.S. Constitution, the New York Constitution, and state law. More than 50 years ago, in *Gideon v. Wainwright*, the Supreme Court held that states are required to appoint counsel to any person charged with a crime but too poor to hire a lawyer.⁴ Writing for the Court in *Gideon*, Justice Hugo Black observed that: “[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to be an obvious truth.”⁵ Since 1965, New York State courts have interpreted the New York Constitution to include a right to counsel that is “meaningful and effective.”⁶ That year, New York enacted County Law 18-B, making its counties responsible for administering the right to counsel. Unfortunately, the resulting patchwork of indigent defense services in New York’s 62 counties has failed to guarantee the constitutional rights due to criminal defendants and, therefore, is insufficient to satisfy the constitutional obligations placed upon the State of New York.

In 2004, the late Judith S. Kaye, former Chief Judge of the New York Court of Appeals, formed a commission to “examine the effectiveness of indigent criminal defense services across the State.”⁷ The Kaye Commission found the amount of money allocated for public defense services—about 20 percent of which was provided by the State—to be “grossly inadequate.” This underfunding, the Kaye Commission found, resulted in (a) an insufficient number of attorneys to cover arraignments; (b) caseloads so excessive that public defense attorneys have little to no contact with their clients and spend almost no time investigating their clients’ cases; (c) inadequate training of public defense attorneys; and (d) inadequate support services for public defense attorneys.⁸ The Kaye Commission further found that there were no statewide standards to ensure quality public defense services, resulting in substandard practices in some areas.⁹ The Kaye Commission concluded that the “largely county-financed indigent defense services fails to

² See *id.*; see also Alexa Van Brunt, *Poor People Rely on Public Defenders Who Are Too Overworked to Defend Them* (June 17, 2015), available at <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked#The%20Guardian>.

³ Andrew Cuomo, Opinion, *How New York’s Leading on Criminal-Justice Reform* (July 19, 2015), available at <http://nypost.com/2015/07/19/how-new-yorks-leading-on-criminal-justice-reform/>.

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵ *Id.* at 344.

⁶ *People v. Witek*, 15 N.Y.2d 392, 395 (1965).

⁷ See Final Report to the Chief Judge of the State of New York, Commission on the Future of Indigent Defense Services, at 1, (June 18, 2006), available at https://www.nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf.

⁸ See *id.* at 17-19.

⁹ See *id.* at 17, 20.

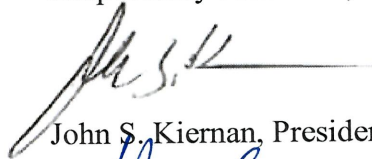
satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused."¹⁰ It recommended that the New York Legislature, not the counties, provide "adequate funding of indigent criminal defense."¹¹

Despite the Kaye Commission's findings, public defense services in the majority of New York's counties continue to lack appropriate resources. The 2014 settlement of *Hurrell-Harring v. State of New York* required that adequate criminal defense funding be provided to the five counties that were defendants in that proceeding and that standards be implemented to assure quality public defense services.¹² Although the settlement promises to improve public defense services in counties involved in the underlying lawsuit, it does not address New York's other 57 counties, where indigent defense services remain underfunded and constitutionally inadequate. The City Bar and its Mass Incarceration Task Force strongly believe that indigent defendants in every county in New York have the right to meaningful and effective representation in criminal proceedings.

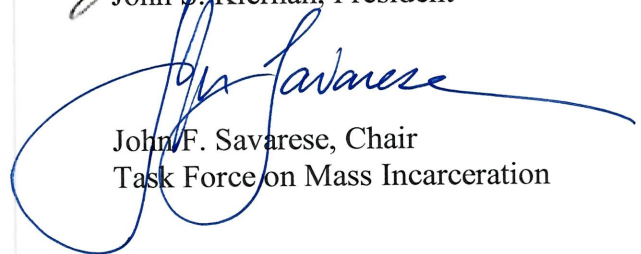
By approving of bill A.10706/S.8114, the state would send the message to New Yorkers, and to the country, that New York State is committed to a fair criminal justice system where a person's right to meaningful and effective counsel does not depend on his or her location within the State. In contrast to the "disparate, inequitable, and ineffective system" the Kaye Commission observed,¹³ this bill has potential to transform New York's public defense system into one that is fair, just, and effective. In doing so, this bill will reduce the number of individuals who are wrongly incarcerated and protect New York's most vulnerable citizens from the unfair application of our criminal laws.

For the above-stated reasons, the City Bar and its Mass Incarceration Task Force respectfully urge you to sign bill A.10706/S.8114 into law.

Respectfully submitted,



John S. Kiernan, President



John F. Savarese, Chair
Task Force on Mass Incarceration

Cc: Alphonso David, Esq., Counsel to the Governor
Hon. John A. DeFrancisco, New York State Senate
Hon. Patricia Fahy, New York State Assembly

¹⁰ See *id.* at 15.

¹¹ See *id.* at 32.

¹² Stipulation and Order of Dismissal in *Hurrell-Harring, et al. v. State of New York*, available at http://www.nyclu.org/files/releases/10.21.14_hurrellharring_settlement.PDF.

¹³ See Final Report to the Chief Judge of the State of New York, at 3.