

Testimony of  
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Association

2022 Joint Legislative Budget  
Hearing:  
Public Protection

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I am T. Andrew Brown, President of the New York State Bar Association, the nation's largest voluntary state bar association. On behalf of our 70,000 members, I thank you for the opportunity to submit testimony to the 2022 Joint Legislative Budget Hearing on Public Protection.

Access to justice will be the primary focus of my remarks, and it is the centerpiece of the Association's legislative priorities for the coming year. It is critical that no matter the financial circumstances of the state, access to justice must be preserved – particularly for the underserved, the vulnerable and the less fortunate. A foundational principle of our republic is the inherent power of any individual, regardless of status or stature, to invoke his or her right to access our legal system in defense of the deprivation of his or her liberties or property.

The New York State Bar Association urges the Legislature, as it considers the financial future of the state, to remain committed to protecting access to justice and ensuring the public's trust and confidence in our system of laws. This is tantamount to protecting the very foundation of our democracy.

### **NYSBA Supports Raising the Assigned Counsel Rate for 18-b Attorneys and Attorneys for the Children**

Simply put, there are not enough attorneys available to represent indigent clients and children due to inadequate compensation rates.

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 constitutionally and statutorily entitled to legal representation at their most vulnerable times. 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.

The rates for attorneys appointed under Article 18b of the county law, more commonly referred to as "18b attorneys" have remained at \$75 an hour for felony cases, and \$60 per hour for misdemeanors since 2004 without an increase in the rate. In that same time frame, the salary for assigned counsel in the federal courts has been raised 14 times and is more than double the New York State rate at \$155 dollars an hour. Attorney for Children rates have similarly remained unchanged over the last 18 years at \$75 per hour with their last increase resulting from the 2003 budget session.

Covid has worsened the financial situations of many marginalized populations, resulting in an increase of individuals qualifying for assigned counsel, while the number of available attorneys plummets.

The consequences of not raising assigned counsel rates will be repeated delays in court appearances and hearings. A continuation of a precipitous decline in the number of attorneys financially able to take on cases results in clients suffering prolonged waiting periods before their legal matters are resolved, including remaining incarcerated or separated from family. For context, a survey of the reported panel numbers in the 3<sup>rd</sup> department shows that most jurisdictions average less than 20 Attorneys for the Child on a panel, with a third of reported counties having 10 or less. Some panels are in critical need and have been for some time. For example, in some jurisdictions we have observed a 50% or more decrease in panel participation in the last 10 years.

Individuals in need of immediate relief will proceed pro se and make critical legal decisions, such as who has custody of their child and under what terms without the assistance of counsel. We will also see a reduction in experienced attorneys serving on assigned counsel panels due to the insufficient rate of pay. We will also see additional burdens on the court systems, that threaten the ability to comply with legal mandates and make expediting court review of urgent matters more difficult if not impossible.

Recently, Senator Bailey and Assemblyman Magnarelli's legislation was amended to call for full state funding of the Assigned Counsel Programs, including attorneys for the children and a cost-of-living adjustment. The Association applauds the sponsors and cosponsors of this legislation for providing a legislative solution addressing this long overdue issue.

The Bar Association strongly supports enactment of the language in S.3527a/A.6013a and urges its inclusion in this year's budget.<sup>1</sup>

### **Support for Court Reorganization/Restructuring**

The Bar Association continues to support legislative proposals to amend the state Constitution for the purpose of reorganization or restructuring the court system, which are avenues to address institutionalized inequities and resource scarcity.

New York has 11 different trial courts, which is inefficient and cumbersome from a case management standpoint and therefore costly for taxpayers. Each of the 11 trial courts — which is more than exist in any other state — has its own filing system and administrative staff. The burdens placed on everyday New Yorkers by our current system are intolerable. Holding countless confusing hearings and proceedings is not only expensive, it also causes anxiety, pain, and despair for vulnerable persons.

On the matter of advancing diversity, the state Supreme Court bench is overwhelmingly white and male. When individuals come before the court and see someone who looks like them on the bench, it helps instill confidence in the system at large. This is crucial in legitimizing a court system where others seek to undermine the rule of law.

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<sup>1</sup> See [NYSBA's Report The Need to Increase Assigned Counsel Rates in New York](#), 2018; See also [NYSBAs Support Flyer for S3527-A/ A.6013-A](#)

Litigants stand to benefit from the court reorganization plan as cases will be resolved faster with fewer court appearances. Parents save on child-care and avoid spending valuable time away from work. Travel costs are reduced because of fewer required trips to court. Numerous other quality of life improvements and attendant stress reductions will also occur.

NYSBA strongly supports reorganizing and consolidating trial courts into the Supreme Court. Accordingly, we urge the Legislature to pass the proposed constitutional amendment this year.<sup>2</sup>

### **10 Day Voter Registration (PPGG part N)**

States that have enabled individuals to register to vote close to the election day, including same day voter registration, see significant increases in voter turnout. The Association supports changing the voter registration deadline to 10 days to encourage increased voter participation.<sup>3</sup>

### **Recommendations for Police Reform**

In the wake of the murder of Daniel Prude and George Floyd, I as President-Elect co-chaired the New York State Bar Association's Task Force on Racial Injustice and Police Reform. The Task Force was comprised of attorneys with direct experience including two who were police officers before they became attorneys. The Task Force held multiple public forums with police chiefs, activists, community leaders, elected representatives and other stakeholders. The Report and Recommendations of the Task Force on Racial Injustice and Police Reform contains 35 comprehensive reforms at every stage of policing.

I would like to highlight three proposals that could make immediate change to the criminal justice system: 1) Mandating police officers to intervene when another officer is using excessive force (A.7283a/S.1619a)<sup>4</sup>; 2) require all New York State police agencies to wear body cameras; and 3) modifications to the executive law to require the Attorney General to investigate any instance where a body camera fails to record.

The Association supports these recommendations and urges their inclusion in this year's state budget.<sup>5</sup>

### **Conclusion**

The New York State Bar Association respectfully submits that measured investments be made so that justice remains accessible to the most vulnerable in a time of dire need.

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<sup>2</sup> See NYSBA Report: [The Judiciary Article of the New York State Constitution; Opportunities to Modernize the New York State Courts](#), 2017

<sup>3</sup> See NYSBA's Special [Committee on Voter Participation Report](#), 2013

<sup>4</sup> See NYSBA's [Support flyer for A.7283-A/ S.1619-A](#)

<sup>5</sup> See NYSBA's [Report and Recommendation of the Task Force on Racial Injustice and Police Reform](#), 2021

The New York State Bar Association urges you to remain committed to protecting against the debasement of these principles.