

County Law 18-b**County**

§ 722. Plan for representation. The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law, section four hundred seven of the surrogate's court procedure act or article ten of the mental hygiene law, who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to county law article eighteen-A.

2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county or city, organized and operating to give legal assistance and representation to persons charged with a crime within the city or county who are financially unable to obtain counsel. In proceedings under the family court act, representation by a private legal aid bureau or society, or by any corporation, voluntary association, or organization permitted to practice law under the authority of subdivision five of section four hundred ninety-five of the judiciary law.

3. (a) Representation by counsel furnished pursuant to either or both of the following: a plan of a bar association in each county or the city in which a county is wholly contained whereby: (i) the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service; or (ii) such representation is provided by an office of conflict defender.

(b) Any plan of a bar association must receive the approval of the state administrator before the plan is placed in operation. In the county of Hamilton, representation pursuant to a plan of a bar association in accordance with subparagraph (i) of paragraph (a) of this subdivision may be by counsel furnished by the Fulton county bar association pursuant to a plan of the Fulton county bar association, following approval of the state administrator. When considering approval of an office of conflict defender pursuant to this section, the state administrator shall employ the guidelines established by the office of indigent legal services pursuant to paragraph (d) of subdivision three of section eight hundred thirty-two of the executive law.

(c) Any county operating an office of conflict defender, as described in subparagraph (ii) of paragraph (a) of this subdivision, as of March thirty-first, two thousand ten may continue to utilize the services provided by such office provided that the county submits a plan to the state administrator within one hundred eighty days after the promulgation of criteria for the provision of conflict defender services by the office of indigent legal services. The authority to operate such an office pursuant to this paragraph shall expire when the state administrator approves or disapproves such plan. Upon approval, the county is authorized to operate such office in accordance with paragraphs (a) and (b) of this subdivision.

4. Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to sections 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence or on a motion for a writ of error coram nobis, or in assigning counsel pursuant to the provisions of section two hundred

sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, or in assigning counsel to a defendant when a case has been calendared for consideration of resentencing pursuant to subdivision four of section six hundred one-d of the correction law or when a court is otherwise called upon to consider whether a proper term of post-release supervision was imposed as part of a determinate sentence, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in this subdivision or subdivision three of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this article. When a case has been calendared for consideration of resentencing pursuant to subdivision four of section six hundred one-d of the correction law or when a court is otherwise called upon to consider whether a proper term of post-release supervision was imposed as part of a determinate sentence, the attorney appointed should be the attorney who appeared for the defendant in connection with the judgment or sentence or, if the defendant is currently represented concerning his or her conviction or sentence or with respect to an appeal from his or her conviction or sentence, such present counsel.

5. In classification proceedings under article six-C of the correction law or from an appeal thereof, representation shall be according to a plan described in subdivisions one, two, three or four of this section. If such plan includes representation by a private legal aid bureau or society, such private legal aid bureau or society shall have been designated to give legal assistance and representation to persons charged with a crime.

Upon an appeal in a criminal action, and on any appeal described in section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, wherein the party is financially unable to obtain counsel, the appellate court shall assign counsel furnished in accordance with the plan, conforming to the requirements of this section, which is in operation in the county or in the city in which a county is wholly contained wherein the judgment of conviction, disposition, or order of the trial court was entered; provided, however, that when such county or city has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and such appellate court is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when such county or city has not placed in operation any plan conforming to that prescribed in this section, such appellate court may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.