

McKinney's Consolidated Laws of New York Annotated

County Law (Refs & Annos)

Chapter 11. Of the Consolidated Laws

Article 18-B. Representation of Persons Accused of Crime or Parties Before the Family Court or Surrogate's Court

McKinney's County Law § 722

§ 722. Plan for representation

Effective: November 8, 2019

[Currentness](#)

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 office of indigent legal services 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 office of indigent legal services. When considering approval of an office of conflict defender pursuant to this section, the office of indigent legal services shall employ the guidelines it has heretofore established 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 (or, on or after April first, two thousand nineteen, the office of indigent legal services) 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.

(d) For purposes of this subdivision, any plan of a bar association approved hereunder pursuant to this subdivision, as provided prior to April first, two thousand nineteen, shall remain in effect until it is superseded by a plan approved by the office of indigent legal services or disapproved by such office.

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. Assignment of counsel upon an appeal in a criminal action pursuant to this subdivision, or pursuant to [paragraph b of subdivision one of section thirty-five of the judiciary law](#), includes authorization for representation by appellate counsel, or an attorney selected at the request of appellate counsel by the administrator of the plan in operation in the county (or city in which a county is wholly

contained) where the conviction was entered, with respect to the preparation and 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; compensation and reimbursement for such representation and expenses shall be governed by [sections seven hundred twenty-two-b](#) and [seven hundred twenty-two-c](#) of this article.

Credits

(Added L.1965, c. 878, § 1. Amended L.1966, c. 708; L.1966, c. 761, § 1; L.1971, c. 1097, § 32; L.1973, c. 615, § 4; L.1974, c. 615, § 9; L.1975, c. 682, § 10; L.1977, c. 682, § 7; L.1999, c. 453, §§ 23 to 25, eff. Jan. 1, 2000; L.2003, c. 62, pt. J, § 1, eff. Jan. 1, 2004; L.2007, c. 7, § 50-a, eff. April 13, 2007; L.2008, c. 141, § 6, eff. June 30, 2008; L.2010, c. 56, pt. E, § 3, eff. June 22, 2010; L.2018, c. 55, pt. MM, §§ 1, 2, eff. April 1, 2019; L.2019, c. 446, § 1, eff. Nov. 8, 2019.)

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Current through L.2024, chapters 1 to 59, 61 to 121. Some statute sections may be more current, see credits for details.