

State Finance Law § 98-b
Indigent Legal Services Fund

1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a special fund to be known as the indigent legal services fund.
2. Such fund shall consist of all moneys appropriated for the purpose of such fund, all other moneys required to be paid into or credited to such fund, and all moneys received by the fund or donated to it.
3. (a) As provided in this subdivision, moneys received by the indigent legal services fund each calendar year from January first through December thirty-first shall be made available by the state comptroller in the immediately succeeding state fiscal year to (i) assist counties and, in the case of a county wholly contained within a city, such city, in providing legal representation for persons who are financially unable to afford counsel pursuant to article eighteen-B of the county law; and (ii) assist the state, in funding representation provided by assigned counsel paid in accordance with section thirty-five of the judiciary law. Moneys from the fund shall be distributed at the direction of the state comptroller in accordance with the provisions of this subdivision.
 - (b) Commencing on April first, two thousand five, moneys from such fund shall first be made available, in the fiscal year succeeding the calendar year in which collected, to reimburse the state for payments, made in such previous calendar year, for assigned counsel paid in accordance with section thirty-five of the judiciary law, up to an annual sum of twenty-five million dollars.
 - (c) The balance of moneys received by such fund shall be distributed by the state comptroller, in the fiscal year next succeeding the calendar year in which collected, to counties and, in the case of a county wholly contained within a city, such city, to assist such counties and such city in providing representation pursuant to article eighteen-B of the county law. The amount to be made available each year to such counties and such city shall be calculated by the state comptroller as follows:
 - (i) The county executive or chief executive officer of each county or, in the case of a county wholly contained within a city, such city shall, in accordance with subdivision two of section seven hundred twenty-two-f of the county law, certify to the state comptroller, by March first of each year, the total expenditure of local funds by each such county or city, during the period January first through December thirty-first of the previous calendar year, for providing legal representation to persons who were financially unable to afford counsel, pursuant to article eighteen-B of the county law.
 - (ii) The state comptroller shall then total the amount of local funds expended by all such counties and such city to determine the sum of such moneys expended by all such counties and such city for providing such representation in such calendar year.

(iii) The state comptroller shall then calculate the percentage share of the statewide sum of such expenditures for each county and such city for such calendar year.

(iv) The state comptroller shall then determine:

(A) the fund amount available to be distributed pursuant to this paragraph, which shall be the amount received by the indigent legal services fund in the immediately preceding calendar year, minus the amount to be distributed to the state under paragraph (b) of this subdivision provided, however, that with respect to the first payment made to counties and such city on or after April first, two thousand five, such payment shall be made from the amounts received by the indigent legal services fund in the immediately preceding two calendar years, minus the amount to be distributed to the state under paragraph (b) of this subdivision; and

(B) the annual payment amount to be paid to each county and such city pursuant to this subdivision, which shall be the product of the percentage share of statewide local funds expended by each such county and city, as determined pursuant to subparagraph (iii) of this paragraph, multiplied by the fund amount available for distribution, as determined pursuant to clause (A) of this subparagraph.

(d) All payments from this account shall be made upon vouchers approved and certified and upon audit and warrant of the state comptroller. The state comptroller shall, as soon as practicable, make such payments to the state and each county and each city in a lump sum payment.

4. Maintenance of effort.

(a) As used in this section, "local funds" shall mean all funds appropriated or allocated by a county or, in the case of a county wholly contained within a city, such city, for services and expenses in accordance with article eighteen-B of the county law, other than funds received from: (i) the federal government or the state; or (ii) a private source, where such city or county does not have authority or control over the payment of such funds by such private source.

(b) State funds received by a county or city pursuant to subdivision three of this section shall be used to supplement and not supplant any local funds which such county or city would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-B of the county law. All such state funds received by a county or city shall be used to improve the quality of services provided pursuant to article eighteen-B of the county law.

(c) Notwithstanding the provisions of any other law, as a precondition for receiving state assistance pursuant to subdivision three of this section, a county or city shall be required pursuant to this paragraph to demonstrate compliance with the maintenance of effort provisions of paragraph (b) of this subdivision. Such compliance shall be shown as a part of the annual report submitted by the county or city in accordance with subdivision two of section seven hundred twenty-two-f of the county law. Such maintenance of effort shall be shown by demonstrating with specificity:

(i) that the total amount of local funds expended for services and expenses pursuant to article eighteen-B of the county law during the applicable calendar year reporting period did not decrease from the amount of such local funds expended during the previous calendar year provided, however, that with respect to the report filed in two thousand six regarding calendar year two thousand five, such maintenance of effort shall be shown by demonstrating with specificity that the total amount of local funds expended for services and expenses pursuant to article eighteen-B of the county law during the two thousand five calendar year did not decrease from the amount of such local funds expended during calendar year two thousand two; or

(ii) where the amount of local funds expended for such services decreased over such period, that all state funds received during the most recent state fiscal year pursuant to subdivision three of this section were used to assure an improvement in the quality of services provided in accordance with article eighteen-B of the county law and have not been used to supplant local funds. For purposes of this subparagraph, whether there has been an improvement in the quality of such services shall be determined by considering the expertise, training and resources made available to attorneys, experts and investigators providing such services; the total caseload handled by such attorneys, experts and investigators as such relates to the time expended in each case and the quality of services provided; the system by which attorneys were matched to cases with a degree of complexity suitable to each attorney's training and experience; the provision of timely and confidential access to such attorneys and expert and investigative services; and any other similar factors related to the delivery of quality public defense services.