

Memorandum in Support

COMMITTEE ON MANDATED REPRESENTATION

Mandated Representation #3

April 8, 2021

S. 1279

By: Senator Bailey

A. 5689

By: M. of A. Cruz

Senate Committee: Finance

Assembly Committee: Codes

Effective Date: 60th day after it shall have become a law

AN ACT to amend the criminal procedure law, in relation to streamlining the assignment of appellate counsel for indigent criminal defendants.

LAW AND SECTIONS REFERRED TO: Section 380.55 of the criminal procedure law.

THE COMMITTEE ON MANDATED REPRESENTATION SUPPORTS THIS LEGISLATION

The Committee on Mandated Representation of the New York State Bar Association (“CMR”) strongly supports S.1279 (Bailey)/A.5689(Cruz), a simple fix to Criminal Procedure Law § 380.55. The State Bar has charged our committee with commenting on legislation that will promote the quality of representation provided to, and the fair access to justice by, indigent criminal defendants in the State courts.

We strongly support amending C.P.L. § 380.55 to ensure that indigent defendants gain access to streamlined assignment of appellate counsel, thereby saving scarce time, money, and resources; and providing enhanced access to justice for vulnerable individuals.

The current process of requesting assignment of appellate counsel for indigent criminal defendants relies on the defendant filing an unnecessarily long and cumbersome motion to the appellate court to recertify their status as an indigent defendant. The applications are often deficient since indigent defendants usually have no legal training, are often homeless or living in non-permanent housing or incarcerated, and might have mental health issues or lack facility in English. The result is that either the defendant must make repeated applications or the defendant is deprived of appellate counsel and the ability to pursue an appeal altogether.

Given that it is unlikely an indigent defendant before the trial court will suddenly cease to be indigent on appeal, the sentencing court could issue an order continuing poor person

status under the currently-worded C.P.L. § 380.55, but sentencing courts exercise this authority infrequently and inconsistently.

This amendment would resolve this issue by allowing for appellate counsel to be assigned upon the trial attorney's certification to the appellate court that the defendant is still indigent, thereby eliminating the necessity of the complex application process that is primarily used. By passing this legislation, we can ensure that indigent criminal defendants gain equitable access to their right to appeal.

S.1279/A.5689 is an urgent and necessary bill to simply restore its original legislative intent to make the appeals process simpler and more efficient for vulnerable defendants.

For the above reasons, the Committee on Mandated Representation **SUPPORTS** this legislation.