

S2198 BAILEY Same as [A 7644](#) Lentol (MS) [Veto No. 211 of 2019](#) [Voting](#)

Text Versions: [S 2198](#)

S2198 BAILEY Same as [A 7644](#) Lentol (MS)

ON FILE: 01/23/19 Executive Law

TITLE....Relates to the definition of qualified agencies

01/23/19 REFERRED TO FINANCE

06/17/19 COMMITTEE DISCHARGED AND COMMITTED TO RULES

06/17/19 ORDERED TO THIRD READING CAL.1416

06/17/19 PASSED SENATE

06/17/19 DELIVERED TO ASSEMBLY

06/17/19 referred to codes

06/18/19 substituted for a7644

06/18/19 ordered to third reading rules cal.401

06/18/19 passed assembly

06/18/19 returned to senate

12/06/19 DELIVERED TO GOVERNOR

12/13/19 VETOED MEMO.211

BAILEY, HOYLMAN, LANZA, MONTGOMERY, PARKER, RIVERA,
SALAZAR

Amd §835, Exec L

Relates to the definition of qualified agencies; adds public defenders, legal aid societies, and assigned counsel administrators.

VETO MESSAGE - No. 211

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 2198, entitled:

"AN ACT to amend the executive law, in relation to the definition of qualified agencies"

NOT APPROVED

This bill would amend the definition of "qualified agency" contained in Executive Law Section 835 for the purpose of allowing public defen-

ders, legal aid societies, and assigned counsel administrators access to the criminal history information maintained by the Division of Criminal Justice Services (DCJS).

Currently, the Criminal Procedure Law grants public defense attorneys access to criminal history reports of clients and witnesses. Additionally, last year, I enacted sweeping discovery reform that becomes effective January 1, 2020 which requires prosecutors to provide defense attorneys with a record of the judgment of convictions and any pending criminal actions of witnesses at the advent of a criminal case. Therefore, this bill is superfluous and duplicative of existing and prospective statutory requirements.

As this bill would be nothing more than redundant of existing law and yet places an unfunded fiscal burden on DCJS to audit additional users, I am constrained to veto this bill.

The bill is disapproved.

(signed) ANDREW M. CUOMO

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S2198

SPONSOR: BAILEY

TITLE OF BILL:

An act to amend the executive law, in relation to the definition of qualified agencies

PURPOSE OR GENERAL IDEA OF BILL:

To authorize public defenders, legal aid societies, and administrators of assigned counsel plans to have access to the Division of Criminal Justice, Services criminal history records for use in connection with the representation of public defense clients as defined in County Law article 18-b.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 amends subdivision 9 of Executive Law section 835 to add public defenders, legal aid societies, and assigned counsel administrators to the list of qualified agencies. Qualified agencies may enter into agreements with the Division of Criminal Justice Services for access to its criminal history database as authorized by subdivision 6 of Executive Law section 837.

JUSTIFICATION:

Agencies that are defined as "qualified agencies" under Executive Law 835(9) have access to the criminal history records maintained by the Division of Criminal Justice Services. See Executive Law § 837(6); 9 NYCRR Part 6051. The proposed bill would add public defenders, legal aid societies, and administrators of assigned counsel programs to the list of qualified agencies. Public defense providers would then be able to enter into use and dissemination agreements with the Division of Criminal Justice Services that would govern their access to criminal history information.

In order to provide effective representation, including bail applications, case investigation, plea negotiation, and sentencing advocacy, public defense attorneys need to have ready access to criminal history reports of clients and witness. Currently, public defense providers rely on district attorneys, judges, and other members of the criminal justice community for access to criminal history reports; often, disclosure of these reports is not timely. Providing public defense counsel direct access to criminal history reports will help them provide effective representation to their clients and will improve the efficiency of the entire criminal justice system in New York State.

In 1991, counsel for the Division of Criminal Justice Services acknowledged the importance of granting public defense counsel direct access to criminal history information: "Since defense representation is a criminal justice function and an integral part of the criminal justice system, it is a natural extension to grant defense counsel the same ability to access Division of Criminal Justice Services criminal history records currently afforded to prosecutors." 1991;Legislative Proposal IR Memorandum, M. Dawn Herkenham, Counsel, Division of Criminal Justice Services to Evan A. Davis, Counsel to the Governor. The Division of Criminal Justice Services' Systems Improvement's for Enhanced Community Safety (SIFECs) public Defense State.I Report (1990) also advocated for public defense counsel having direct access to criminal history information. "Ready access to criminal histories will benefit the defense and positively impact the efficiency of the criminal justice system." Public Defense State I Report, 111-3.

LEGISLATIVE HISTORY:

2015-2016: S.5358/A.7720(Lentol) - Referred to Finance

FISCAL IMPLICATIONS:

Minimal.

EFFECTIVE DATE:

Immediately.

<http://public.leginfo.state.ny.us/navigate.cgi?NVDTO:>