

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A9522

REVISED MEMO 04/15/2016

SPONSOR: Richardson

TITLE OF BILL: An act to amend the criminal procedure law, in relation to granting a defendant poor person relief on appeal

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Advisory Committee on Criminal Law and Procedure.

This measure would add a new section 380.55 to the Criminal Procedure Law that would authorize a trial court to grant poor person status for assignment of appellate counsel at the time of sentence. The authority to assign specific counsel will continue to reside in the appellate court. Where the trial court declines to grant an application, the defendant would still be permitted to make a traditional application for poor person relief to the appellate court.

Under current law, the application for poor person relief must be made to the court where the appeal is to be taken (See e.g., CPLR 1101). There are several notable exceptions. For instance, where a sex offender has been granted poor person status for SORA proceedings, the Correction Law provides that the assignment of counsel continues through any appeal (Correction Law § 168-n). Moreover, in Family Court cases, where a respondent has assigned counsel, so long as respondent continues to be indigent, no motion for assignment of counsel for any appeal is required (FCA § 1118). In federal appeals, the motion for assigned counsel on appeal is made to the trial court (Fed. R. App. Proc. Rule 24).

Our Advisory Committee believes that the trial judge is ordinarily in the best position to know whether a defendant is eligible for poor person status, having already ruled-on the issue in many cases for purposes of assigning trial counsel. As a practical matter, a criminal defendant's financial condition rarely improves between arrest and conviction, and thus he or she is rarely able to hire appellate counsel after being convicted and sentenced. Moreover, by entertaining the application at the time of sentence, the trial court can eliminate needless delay and institutional expense caused by requiring defendant to make a subsequent application for poor person relief in the appellate court. Although by this measure the trial court would not be required to hear the application for poor person relief, if a defendant is represented by assigned counsel at the time of conviction, the court would have the discretion to entertain the application.

This measure will help streamline the delivery of indigency services in New York. Under current rules, assigned trial counsel is not authorized to represent a convicted defendant on appeal, except to the extent of filing a notice of appeal. Therefore, it falls on the defendant, acting pro se, to file the application for poor person relief with the appropriate appellate court, using the correct forms and following the

correct procedures. Indigent defendants usually have no legal training, are often homeless and may have significant mental health issues. As a result, initial applications by indigent defendants are often deficient. After review, the appellate court must return the application to the pro se defendant with an explanation of the deficiency. This leads to repeated applications that are frequently rejected several times before submission of an application that can be properly considered. The current process therefore needlessly consumes scarce court resources and ultimately adds significant delay to many appeals.

This measure adds a new section 380.55 to the Criminal Procedure Law and provides the trial court with discretion to hear an application for poor person relief at the time of sentencing a defendant. The authority is limited to cases where defendant is already represented by assigned counsel and the application requires assigned counsel to represent to the court that defendant has insufficient funds to retain counsel on appeal. If the trial court grants the application, it is required to issue a written order that must be sent to the appropriate appellate court. Finally, the measure provides that if the trial court denies the application, the defendant would have the option to make a formal application to the appropriate appellate court under current procedures.

This measure, which would streamline the process and save court resources, would take effect immediately.