



# New York State Defenders Association, Inc.

## *Public Defense Backup Center*

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November 18, 2016

The Honorable Andrew M. Cuomo  
Governor of New York  
Executive Chamber  
The Capitol  
Albany, NY 12224

Dear Governor Cuomo:

On behalf of the New York State Defenders Association and public defense clients around the state, I urge you to sign bill A.9522/S.7246. This bill will give trial courts the authority to grant poor person relief on appeal to criminal defendants who have been represented by assigned counsel at the trial level.

Under current law, public defense clients must make poor person applications to the appellate court for criminal appeals, even when the trial court has previously found that the individual is unable to afford counsel. This is in contrast to appeals from SORA proceedings and family court matters, where, if an individual was found eligible for assigned counsel at the trial level, the assignment of counsel continues through the appeal.

Most defendants seeking to appeal have to complete and file poor person applications without legal assistance, and often when they are in the process of transitioning into state prison or county jail to begin serving their sentence. The majority of these defendants have no legal training, and some are incapable of completing these documents because of literacy or language barriers or significant mental health issues. Defendants who are incapable of filing an application or who do not understand that an application is required will ultimately lose their statutorily guaranteed right to direct appeal. Assuming a defendant is able to file an application, that application is often incomplete. The appellate court must expend administrative time returning the application to the defendant, who must then try to provide the missing information and documentation or give up and abandon the right to appeal. Sometimes it can take several attempts before a defendant successfully completes an application. This causes needless delays in appeals and wastes the time and resources of appellate courts.

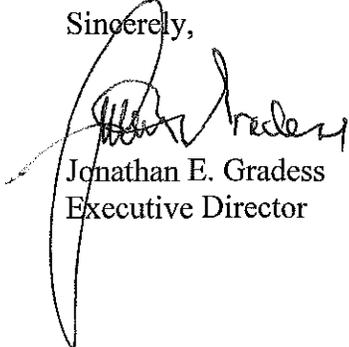
This bill will help streamline this process, making it more efficient for courts and public defense clients. Trial courts will have the discretion at the time of sentencing to consider an application for poor person relief on appeal. The assigned trial attorney must represent that the client continues to be eligible for counsel and that the appeal will be expedited if the application is granted. Rarely, if ever, do clients deemed eligible for counsel have their financial situation improve after conviction. Typically their financial situation is worse. The trial court, which is

already aware of the defendant's financial circumstances, having already decided the individual was financially unable to afford counsel and often having examined financial information in connection with sentencing, is usually in the best position to determine whether the defendant is unable to afford appellate counsel. If the court grants the application, the written order will be sent to the appropriate appellate court so that counsel can be assigned and begin working on the appeal. If the application is denied, the defendant will be able to make a new application before the appellate court.

In addition to the obvious administrative benefits of expediting initial appellate case processing, many studies have shown the positive impact procedural fairness has on how people view our criminal justice system.<sup>1</sup> By making the poor person application process less cumbersome and frustrating and by reducing delays at the start of the appellate process, the state will send a message to defendants, their families, and the public that it respects the statutory right to appeal and the right to assigned counsel on appeal.

For these reasons, the New York State Defenders Association urges you to sign A.9522/S.7246.

Sincerely,



Jonathan E. Gradess  
Executive Director

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<sup>1</sup> Many of these studies are available on the Procedural Fairness for Judges and Courts website, <http://www.proceduralfairness.org/>.