

OFFICE OF THE CLERK OF THE LEGISLATURE

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NOTICE OF ADOPTION

Per Section 214 of the County Law, you are hereby notified that on December 9, 2021, the Oswego County Legislature adopted the following:

**COUNTY OF OSWEGO LOCAL LAW NUMBER 2 OF 2021
"A LOCAL LAW ESTABLISHING THE OFFICE OF THE OSWEGO COUNTY
PUBLIC DEFENDER"**

Copies of Local Law #2 of 2021 are posted in the Oswego County Courthouse on East Oneida Street in Oswego, at the County Clerk's Office at 46 E. Bridge Street in Oswego and available online at oswegocounty.com. Requests can also be e-mailed to betsy.saunders@oswegocounty.com

By Order of the Oswego County Legislature
December 9, 2021
Betsy Sherman-Saunders, Clerk

COUNTY OF OSWEGO
PROPOSED LOCAL LAW 2 OF 2021
A LOCAL LAW ESTABLISHING THE OFFICE OF THE OSWEGO COUNTY
PUBLIC DEFENDER

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF OSWEGO AS FOLLOWS:

Section 1: PURPOSE AND INTENT.

The County of Oswego, through the County Legislature, recognizes its responsibility in providing quality publicly supported legal representation to indigent persons under the County Law. To that end, the Legislature seeks to create the Oswego County Public Defender's Office, and it is the intent of this Local Law to establish a framework to achieve that goal in accordance with the laws of the State of New York.

Section 2: PUBLIC DEFENDER: QUALIFICATIONS; APPOINTMENT; TERM.

Effective January 1, 2022, there shall be an Office of the Oswego County Public Defender created and established. The Public Defender shall be appointed by the County legislature for a (2) two-year term; the initial term of office may be less depending on time of appointment so that the term of office coincides with the term of the County Legislature. The Public Defender shall be directly responsible to the County Legislature and shall have graduated from an ABA accredited law school with a law degree. S/he shall be admitted to the practice of law in the State of New York in good standing and shall be continuously admitted thereto during the term of office. S/he shall have at least (10) ten years' experience as a practicing attorney in the field of criminal law and or in Family Court, at least three years of which shall have involved trial practice. The Public Defender shall hold no other public or political office, shall devote working full-time to the County and shall be a resident of the County of Oswego during the term of office.

Section 3: GENERAL POWERS.

A. The Public Defender shall, as herein provided, act as representative of the County of Oswego in the provision of legal services to the indigent of the County.

B. 1. The Public Defender shall represent, without charge at the request of an indigent defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime as defined in Section 722-a of the County Law in the county in which such Public Defender serves. The term "crime" shall mean a felony, misdemeanor, or the breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a "traffic infraction," for which a sentence to a term of imprisonment is authorized upon conviction thereof. When representing an indigent defendant, the Public Defender shall counsel and represent defendant at every stage of the proceedings following arrest, shall initiate such proceedings as in his/her judgment are necessary to protect the rights of the accused, and may, in his/her discretion, prosecute any appeal, if in his/her judgment the facts and circumstances warrant such appeal.

2. The Public Defender shall also represent, without charge, in a proceeding in Family Court or Surrogate's Court in the county or counties where such public defender serves, any person entitled to counsel pursuant to Section 262 and Section 1120 of the Family Court Act, and Section 407 of the Surrogate's Court Procedure Act, or any person entitled to counsel pursuant to Article 6-C of the Correction Law, or other related matters under County Law Article 18-A who is financially unable to obtain counsel. When representing such person, the public defender shall counsel and represent him at every stage of the proceedings, shall initiate such proceedings as in the judgment of the public defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his judgment the facts and circumstances warrant such appeal.

C. In addition, the Public Defender may assign professional, technical, and clerical personnel in the investigation, preparation, conduct and appeal in any court proceedings involving indigent defendants. The

Public Defender shall be responsible for the management and operation of the Public Defender's Office in accordance with sound management principles, County Legislature's policies, and Civil Service law, and shall have the powers and duties necessary to carry out the functions of the office as set forth herein and such other responsibilities as may from time to time be imposed by resolution of the County Legislature. The Public Defender's duties shall include but not be limited to:

1. Developing, managing, and submitting budgets for approval by the County Administrator and County Legislature;
2. Appointing, hiring, laying-off, suspending, disciplining and/or removing any person employed in the Public Defender's Office in accordance with Civil Service Law and/or collective bargaining units;
3. Establishing and overseeing office policies;
4. Preparing statistical and other reports as required by the State of New York Office of Indigent Legal Services, the County Legislature for presentation to the community, the Courts, and any other appropriate entity;
5. Representing indigent defendants charged with crimes and in other proceedings in local criminal courts, County Court, Surrogate's Court, Family Court and Supreme Court, state Appellate Courts and Sex Offender Registration Act (SORA) matters;
6. Overseeing investigations concerning cases handled by the office;
7. Assigning professional, technical and/or clerical personnel to assist in the cases;
8. Apply for, manage and administer state and federal grant funds pertaining to the office; and
9. Such other and further powers and duties as required by law or as required by the County Legislature.

SECTION 4: POWERS OF APPOINTMENT AND REMOVAL.

Subject to the limitations of the Civil Service Law, the Public Defender is vested with the power and authority to appoint, supervise, discipline, and remove assistant public defenders and employees, and assign and re-assign powers and duties to such employees, consistent with the laws of the State of New York. Pursuant to Section 716 of Article 18-A of the County Law, the

Public Defender may appoint a Deputy Public Defender and as many assistant attorneys, clerks, investigators, stenographers, and other employees as s/he may deem necessary, subject to the authorization of the County Legislature. The Deputy Public Defender and assistant attorneys shall be in the exempt class of the civil service. The Public Defender shall appoint such deputy and assistant attorneys, whom shall serve at his or her pleasure.

SECTION 5: REMOVAL OF THE PUBLIC DEFENDER.

A. Grounds for Removal. As maintaining the quality of indigent legal defense is critical to the County of Oswego, the Courts and those individuals represented by the Office of the Public Defender, the Public Defender shall be subject to removal by the County Legislature for any of the following reasons:

1. Ineligibility to hold or maintain holding such office (e.g. suspended law license).
2. Malfeasance, misfeasance, or non-feasance in office.
3. Conviction of a crime or of a misdemeanor involving moral turpitude, or violation of the oath of office.
4. Failure to perform his or her duties as provided by this Local Law in an honorable, competent, and reasonably efficient manner; or
5. In the event the Public Defender becomes morally, physically, or mentally unfit to act on behalf of the County.

B. Procedures for Removal.

If the Public Defender is to be removed pursuant to this section, prior thereto the Public Defender shall be given a written statement of the reasons alleged for the proposed removal and opportunity to be heard in an executive session of the County Legislature before the County Legislature prior to the date on which the proposed removal is to take effect. The Public Defender shall have the right to an administrative hearing before a neutral hearing officer to be selected by the County Legislature who shall not be a county officer or employee during which a stenographic transcript shall be kept. The report of said hearing officer shall be advisory only upon the County Legislature which shall vote upon the removal in public session. Pending such hearing, the County Legislature may suspend the Public Defender from office

provided that the period of suspension shall not exceed thirty (30) days. Any determination shall be reviewable in an Article 78 proceeding. Removal shall not be required where the office becomes vacant by operation of law (e.g. conviction of a felony, non-county resident).

- C. **Holdover Provisions.** For purposes of this local law, the failure of the County Legislature to reappoint an incumbent Public Defender to a new term of office shall not be deemed a removal or suspension of said Public Defender. The Public Defender shall continue as a holdover in office with full authority to act and receive compensation until his or her successor is appointed and qualified.
- D. **Assigned Counsel Plan Continued.** Nothing herein shall be construed as abolishing the county's Assigned Counsel Plan which is continued and shall remain available for conflicts of interest once the Office of Public Defender is fully functioning.

SECTION 6: CLASSIFICATION; SALARY

Pursuant to Municipal Home Rule Section 10, the Public Defender shall be placed in the unclassified service. The Public Defender shall have a salary set by the County Legislature in the annual budget or by resolution at time of appointment. The Public Defender shall enjoy the benefits of the Management Compensation Plan.

SECTION 7: CONFIDENTIAL SECRETARY.

The County Legislature may create the position of confidential secretary to the Public Defender. Such position shall be in the exempt class of the Civil Service. The Public Defender shall appoint such confidential secretary, whom shall serve at his or her pleasure.

SECTION 8: SEVERABILITY.

If any clause, sentence, paragraph, section, subdivision, or other part of this local law, as written or in its application, shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section,

subdivision, or other part of this local law or its application shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order, judgment or legislation shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited such order or judgment.

SECTION 9: SEQRA DETERMINATION.

The County Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this local law constitutes a Type II action pursuant to Section 617.5(c)(26) and/or (35) of Title 6 of the New York Code of Rules and Regulations (6 NYCRR) and within the meaning of Section 8-0109(2) of the New York State Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Clerk of the Legislature is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance as, may be necessary, in accordance with this local law.

SECTION 10: EFFECTIVE DATE.

This Local Law shall take effect upon its adoption and being duly filed with the New York Secretary of State and Oswego County Clerk as provided by the Municipal Home Rule Law.