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A History of Public Defense in New York State

1881 • The state legislature adopts Section 308 of the Criminal Procedure Law, recognizing that justice requires courts to appoint private counsel on a pro bono basis for unrepresented defendants responding to felony indictments. The law precedes the U.S. Supreme Court's establishment a constitutional right to assigned counsel in felony cases by more than 80 years.

1963 • The United States Supreme Court decides *Gideon v. Wainwright*, ruling that the Sixth Amendment creates a right to court appointed counsel in felony cases in all criminal proceedings.

Writing for a unanimous majority, Justice Hugo Black writes: "In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

1964 • Congress passes the Federal Criminal Justice Act to ensure that defendants in federal court unable to afford a lawyer receive effective defense counsel. Attorney General Robert F. Kennedy shepherds the legislation through Congress. "The poor man looks upon the law as an enemy, not as a friend," Kennedy said. "For him, the law is always taking something away."

1965 • The New York State Court of Appeals decides *People v. Witek*, ruling that defendants in all criminal cases, not merely in felony prosecutions, have a fundamental right to appointed counsel if they cannot afford a lawyer. The court also rules that the right to counsel must be made "meaningful and effective" in courts on every level.

1965 • To meet its constitutional mandates, the legislature adopts Article 18-B of the New York County Law, requiring each of the state's 62 counties to establish its own plan for providing public defense services. The statute gives counties three options for creating a public defense system: establish county public defender offices, contract with a private legal aid society, or use a panel of private assigned counsel. It provides no mechanism for oversight, no standards for quality of representation and places a serious financial burden on the counties.

1967 • The New York State Bar Association (NYSBA) conducts a seminar on indigent defense that addresses the absence of standards for ensuring quality representation, the lack of guidelines for determining an accused person's eligibility for assigned counsel and for ancillary services, such as investigators and experts, the scope of representation, and the representation of minors.

1981 • Perceiving failures within the state's public defense system, the legislature provides funding to the New York State Defenders Association (NYSDA) to administer a Public Defense Backup Center to assist defenders and their clients with cases by securing experts and providing training. NYSDA is asked to analyze the public defense system, identify problems and propose

solutions. Over the next decade, NYSDA publishes a series of reports detailing the public defense system's many shortcomings.

1986-2003 • Bar associations and other interested organizations express mounting concern about the lack of adequate funding public defense and the quality of public defense services.

1994 • The New York County Lawyers Association (NYCLA) raises serious questions about the quality of public defense services and the affect of decreased funding on defense providers. It establishes a task force to study the issue.

1995 • NYCLA's task force urges the immediate creation of a Board of Trustees for Indigent Defense to oversee and secure the professional independence of defender organizations in New York City.

1995 • The State Supreme Court Appellate Division, First Department establishes the Indigent Defense Organization Oversight Committee (IDOOC) to monitor the operation of organizations that contract with New York City to provide public defense services.

1996 • The IDOOC issues its standards, which the Appellate Division, First Department adopts as court rules. IDOOC's mandate does not include the oversight of assigned counsel programs and the committee was not authorized to alter funding of defender organizations that didn't meet its standards. There is some evidence the standards improved the quality of assigned counsel representation in New York City.

1997 • NYCLA's task force announces that the rates of compensation for assigned counsel are inadequate. NYSDA calls for state financial support of assigned council plans.

1998 • The IDOOC issues a report concluding that the Legal Aid Society of New York was not meeting the IDOOC's standards. NYSDA holds fact-finding hearings throughout the state at which numerous witnesses testify to widespread inadequacies in the public defense system.

1999 • The Unified Court System expresses grave concern about the inadequacy of assigned council fees. Chief Judge Judith Kaye proposes using \$63 million of the state's surcharge monies to finance a fee increase. Bar leaders, the presiding justices of the Appellate Division, then-Attorney General Elliot Spitzer, and the New York State District Attorneys Association endorse the plan.

2000 • The Unified Court System issues a report recommending an increase in rates for assigned counsel and urging the state to share the cost of assigned counsel with local governments.

2000 • NYCLA files a lawsuit in Supreme Court, New York County alleging that defendants who cannot afford to hire lawyers in the First Department were being denied their constitutional right to effective legal assistance.

2001 • In January, Gov. George Pataki announces the creation of a joint task force to study the compensation rate for assigned counsel and propose legislation.

2001 • In March, The Appellate Division, First Department's Committee on Legal Representation of the Poor issues a report stating that "the entire system by which poor people are provided legal representation is in crisis." The report says the causes of the crisis were the "lack of resources, support and respect, and inadequate funding of institutional providers combined with ever-increasing caseloads." Also in March, NYSBA issues a report calling for the creation of an independent and politically insulated statewide Public Defense Commission that would oversee the distribution of state funds and the provision of defense services.

2001 • In April, *The New York Times* runs a three-part series on New York City's public defense system. An editorial, *Drive-by Legal Defense*, states that the series portrayed a system in which "underpaid, ill-prepared, virtually unsupervised private lawyers sometimes represent hundreds of defendants per year, leaving little time or incentive for them to master the facts, prepare and argue the cases, or file appeals of dubious convictions."

2001 • In July, the Committee for an Independent Public Defense Commission is formed, chaired by Michael S. Whiteman, former counsel to Gov. Nelson Rockefeller. The committee declares the public defense system on the verge of collapse and presents the governor and legislature a bill to establish an independent oversight commission.

2002 • Sen. Dale Volker and Assemblyman Martin Luster introduce bills that would raise assigned counsel rates, eliminate capes on ancillary defense services and create an independent public defense commission.

2003 • In February, Supreme Court Justice Lucindo Suarez renders a decision in NYCLA's lawsuit, declaring the compensation rates for assigned counsel unconstitutional. Justice Suarez finds that many assigned counsel fail to provide their clients basic services, such as filing appropriate pre-trial motions or preparing for court appearances.

2003 • In May, the legislature enacts legislation that increases the rates for assigned counsel. In response, many counties shift from relying on assigned counsel to establishing county public defender offices in order to avoid bearing the increased cost of paying out the new, higher hourly fees for assigned counsel.

2003 • In November, the Unified Court System convenes a seminar at Pace Law School of stakeholders in the criminal justice system to examine the structure, financing and effectiveness of the public defense system. Experts from across the state and elsewhere identify a host of major problems in the system. A consensus is reached that an effective system would have detailed statewide standards, meaningful training for attorneys, and parity in salary and resources between the prosecution and defense.

2004 • NYSBA establishes the Special Committee to Ensure Quality of Mandated Representation to study issues that arose from the assigned counsel rate increase and the counties' responses to that increase. It also is charged with recommending steps to ensure assigned counsel satisfy constitutional standards. The committee concludes that promulgating standards of representation was the most effective short term measure the association could take to ensure quality public defense services.

2005 • NYSBA's House of Delegates approves a set of standards drafted by the committee. The standards included limitations on lawyers' caseloads, intensive training for lawyers, and a strong support staff for defense lawyers. None of these standards are binding or enforceable. In October, the committee issues a follow up report that urges NYSBA to advocate for an independent entity to oversee public defense services in the state.

2006 • In April, the New York State Association of Criminal Defense Lawyers issues a proposed draft bill to establish a statewide public defense structure overseen by a public defense commission.

2006 • In June, the Kaye Commission on the Future of Indigent Defense releases a report concluding that "the indigent defense system in New York State is both severely dysfunctional and structurally incapable of providing each poor defendant with effective legal representation that he or she is guaranteed by the Constitution of the United States and the Constitution and Laws of the State of New York. ... [and] has resulted in a disparate, inequitable, and ineffective system for securing constitutional guarantees to those too poor to obtain legal counsel of their own choosing."