

CRIMINAL LEGAL SERVICES

Since 1998, the League has been working with the New York State Defenders to improve legal representation for the income eligible defendants in the courts of New York State. The League Judicial Specialist, Lenore Banks, is League Liaison to the NYS Defenders Association and a member of the Client Advisory Board. We have worked with New York State Defenders Association (NYSDA) and others to co-sponsor public hearings on the adequacy of public defense programs across the state; and as members of the Gideon Coalition. We participate annually in "Gideon Day," to lobby state legislators on the necessity of reform.

League participated in the 2001 Gideon Legislative Day. League and coalition members urged legislators to:

1. Restore to the budget those public defense programs that the governor cut.
2. Raise the rate of compensation set for assigned counsel and abolish caps on those fees and related expenses.
3. Establish a schedule of state appropriations to subsidize the rate increase so that it would not simultaneously undermine the provision of public defense services by organized providers (public defenders, legal aid societies and not for profit providers).

Also in spring 2001 The New York State Defenders Association released a report: 'Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services'. This report called for similar legislation actions as the Gideon coalition had in their March lobby day.

A lawsuit in New York City, demonstrated how the low assigned counsel fees created a crisis of constitutional proportions in the delivery of public defense services. This resulted in an injunction raising fees from \$25 in court/\$40 out of court to \$90 per hour across the board in the City. Before that lawsuit could be implemented, the Legislature raised fees statewide in 2003 (effective 2004) to \$60 per hour for misdemeanors, \$75 per hour for all other matters.

In the midst of the fiscal crisis of 2003, the Legislature passed a reform of public defense services in New York State providing for an increase in fees paid to some providers, the first increase since 1986. Fees in cases begun as misdemeanors were raised to \$60 an hour, in or out of court. In other matters for which publicly paid counsel is provided, including felonies (other than capital cases), appeals, and family court matters, the fees were raised to \$75. This represented a substantial jump from fees of \$25/hour out of court and \$40/hour in court, though it is well below the \$90/hour rate set in litigation in New York City as described in the previous paragraph. Caps or limits placed on amounts payable per case were unfortunately not dropped, but were increased, as was the cap on fees for investigators and other expert services needed to assist counsel.

An important aspect of the new law was that New York State agreed to support the public defense function by providing a projected 20 percent increase on top of what localities were already paying. The bill also created an Indigent Legal Services Fund in the custody of the Comptroller and the Commissioner of Taxation and Finance. Four revenue streams were to feed this fund, expected to generate an estimated \$65 million per year. Of this, \$25 million was designated for law guardian

Independent Public Defense Commission

In 2002, the State League made "Establish an Independent Public Defense Commission" a priority on its Legislative Agenda. Such a commission would protect constitutionally and statutorily required legal services from control by those with conflicting interests and provide a single, accountable entity to which any and all concerned groups could turn when quality representation is not met. It would act as a conduit for transmitting state funds to localities that meet standards established by the commission.

On July 9, 2001, the Committee for an Independent Public Defense Commission composed of many former legislators who supported the original 1965 legislation setting up the current system of delivery, announced presentation to the governor and the legislature of proposed legislation which: increased the rate of compensation for lawyers providing legal representation to the poor (so called assigned counsel); provided for an increase in state funding for publicly provided legal representation (Public Defenders); and established a public defense commission to oversee the expenditure of state funds and the provision of publicly provided representation.

The public defense commission was to be housed in a public benefit corporation governed by an independent board. The commission was empowered to create and enforce standards regarding the selection, training, workload, and performance of lawyers, as well as eligibility standards of clients. It would have functioned as the conduit for state financing; fiscally accountable to the state, yet independent of both the executive and judicial branches of government.

The proposal also provided for a nominating committee structure to be chaired by the LWVNYS to help assure independence from both the executive and judicial branches of government. In a letter to the League, July 6, 2001, the chair of the Independent Committee, Michael Whiteman wrote to the League: "We have named the New York State League of Women Voters as one of the members of the nominating committee because we believe your organization represents the kind of experience, integrity and independence that will allow the nominating committee process to succeed."

Under the proposal, the 13-member unpaid commission would have included representatives of the governor, legislative leaders, the New York State Association of Criminal Defense Lawyers, the Vera Institute of Justice, Community Action Association of New York, the New York State Defenders Association, and the New York State Bar Association. It would have been independent of the Department of Criminal Justice Services and the Judiciary and run by a full time director. While the commission would not have had the authority to alter rates - that power would remain with the legislature - it would have established standards for indigent counsel. The general proposal was endorsed by 29 counties through two organizations, the Inter-County Association of Western New York and the Inter-County Association of the Adirondacks. No legislative action was taken on this proposal. In the 2003 legislative session, bills similar to the one proposed by the Independent Committee were introduced. In the 2004 and 2005 legislative sessions, bills were again introduced in the Assembly, but no action was taken in the Senate.

In 2006-2007 a Commission appointed by Chief Judge Kaye to study public defense issued an interim report supporting creation of a statewide independent public defense commission and the final report in June 2006. Release of the final report, calling for a statewide system of defense services headed by an independent commission, engendered statewide public awareness of the need for this public

commission. Findings of the commission included: that the system fails to protect defendants' rights, New York's current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state's constitutional and statutory obligations to protect the rights of the accused indigent.

Recommendation include: establishment of a statewide defense system overseen by an independent commission; this statewide defender office should consist of an Indigent Defense Commission, a Chief Defender and Regional and Local Defender Offices, a Deputy Defender for Appeals, and a Deputy Defender for Conflict Defense. This recommendation will ensure the delivery of indigent defense services in New York State to insure accountability, enforceability of standards, and quality representation.

The League believes that the Judiciary cannot reform public defense alone. The advent of a new Administration provides what we hope will be a welcoming ear in the Executive on this issue.

Locally and on a state level the League will press for Executive support for state legislation creating an Independent Public Defense Commission in 2008.