

New York



Primary Indigent Defense Delivery System: Public Defender/Assigned Counsel/Contract*

Population in 2002: 19,157,532**

**Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:
17.9% from State; 82.1% from Counties****

*Source: "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," by the ABA Standing Committee on Legal Aid and Indigent Defendants, at page 5 (December 2004), available at <http://www.indigentdefense.org/brokenpromise>.

**Source: "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002," by The Spangenberg Group (on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants), at 4 and Table (September 2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf>.

During the 40th anniversary year of the U.S. Supreme Court's decision in *Gideon v. Wainwright*, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID published its final report based on the testimony provided at the hearings, entitled "*Gideon's Broken Promise: America's Continuing Quest for Equal Justice*." This information sheet contains a short summary of the "Problems in Indigent Defense" and "Model Approaches to Providing Services" in New York that were reported by one of the hearing witnesses, as well as "Recent Reform Efforts" that have occurred in the state. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see "*Gideon's Broken Promise: America's Continuing Quest for Equal Justice*," available at <http://www.indigentdefense.org/brokenpromise>.

Problems in Indigent Defense

The following problems were reported by the hearing witness:

- Although New York enacted legislation in 2003 to fund an increase in the rates of compensation paid to private assigned counsel, according to the witness, "that money is classically too little, too late; it is about half of what counties will need to implement the change, and the money is not forthcoming until 2005." To avoid paying the higher rates out of their own budgets, the witness said that counties are engaged in a rapid "rush to the bottom" by either eliminating services entirely or replacing assigned counsel programs with lower-cost options, such as contract defender offices, without any guidance or concern for the provision of quality representation.
- Despite the guidance contained in national standards, there is no provision for formal, systematic training of indigent defense attorneys or support staff at either the state or local levels in New York.
- Eligibility for defense services often is restricted unconstitutionally in New York for the sole purpose of containing the costs of local systems.

- According to the witness, indigent defendants in New York “are mined for their money through partial payment scenarios, illegal co-pay scenarios, and all kinds of intrusive mechanisms that interfere with the right to counsel.”
- In New York, prosecution services receive funds from both the state and federal governments, yet primarily New York’s counties fund indigent defense services.
- Caseloads for indigent defense attorneys far exceed national standards; as the witness remarked, “Caseloads are radically out of whack in some places in New York. There are caseloads per year in which a lawyer handles 1,000, 1,200, 1,600 cases.”
- Contrary to the recommendations contained in national standards, there is no statewide oversight of indigent defense services to ensure uniformity in the quality of representation provided. Since each of the state’s counties are authorized by statute to establish methods for providing indigent defense services within their communities, the result is more than 95 different plans for providing representation. Moreover, the plans differ in almost every respect, including scope of service, staffing procedures, support services, investigation capacity, training requirements, appointment practices, attorney skill level, and eligibility standards.

Recent Reform Efforts

- In 2003, New York enacted legislation that increased the rates of compensation for assigned counsel to \$60 per hour for misdemeanors (with a per-case maximum of \$2,400) and \$75 per hour for all other cases (with a per-case maximum of \$4,400). All per-case maximums are waivable, however, upon a showing of extraordinary circumstances. Prior to the legislation, the New York statutory rates of compensation were \$25 per hour for out-of-court work and \$40 per hour for in-court work, with per-case maximums of \$800 for misdemeanors and \$1,200 for felonies. While the fee increase is effective January 2004, state funding for the increase is uncertain and may not be available until 2005. The legislation also created a task force to review the adequacy of the new rates.
- The statutory fee increases stemmed from a lawsuit instituted by the New York County Lawyers Association (NYCLA) against New York State and New York City, challenging the constitutionality of the statutory rates of compensation paid to private attorneys appointed to represent indigents in criminal and family court. NYCLA was represented *pro bono* in this litigation by the law firm of Davis, Polk & Wardwell. In February 2003, a New York State Supreme Court judge ruled in favor of NYCLA and ordered the state and city to pay assigned counsel \$90 per hour until the state legislature modified the rates. Although the decision was appealed by the state and city, NYCLA settled the lawsuit in November 2003 after enactment of New York’s legislation increasing the assigned counsel fee rates.
- In 2004, New York Chief Judge Judith Kaye established the Commission on the Future of Indigent Defense Services to examine the effectiveness of the state’s system and to develop a blueprint for reform. The commission is comprised of members from the bench and bar, law enforcement, criminal justice agencies, and academia. In addition, efforts are underway in New York to establish a permanent statewide indigent defense agency to promulgate uniform performance standards for county indigent defense programs and to provide

supplemental state funds to programs that comply with those standards. A bill to create such an agency has been introduced in the state legislature during each of the last few years and has been endorsed by a wide range of groups. The proposal also has been endorsed publicly by several state and local newspapers, including the *The New York Times*.

Model Approaches to Providing Services

The following model approach to providing services was reported by the hearing witness:

- The New York State Defenders Association, a non-profit membership organization of criminal defense lawyers, has administered its Public Defense Backup Center with state funding since 1981. The Center provides technical assistance to indigent defense attorneys throughout the state in the form of legal research, publications, training, and consultation. Further, the Center is charged with reviewing the indigent defense system and making recommendations to the legislative, judicial, and executive branches of state government. Technical assistance is also provided to state and local governments in New York to improve the delivery of indigent defense services while reducing costs.