

Locked up and locked out

Lawsuit aims to force state to take over public defender system that fails the poor

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Jacqueline Winbrone didn't do anything wrong.

Still, she spent 52 days in Onondaga County jail, charged with criminal possession of a weapon. During that time, her life changed dramatically. Her husband, who was ill, died and she missed his funeral. She was evicted from her apartment.

Unable to afford bail or a lawyer, Winbrone, of Syracuse, was desperate to proclaim her innocence. She repeatedly called the attorney she was assigned, Tom Marris, but his voicemail through the county's counsel program was always full, she said, and he didn't accept collect calls from jail.

She said she met Marris only twice, at her court appearances, and even then he barely spoke to her.

Winbrone's experience isn't isolated. She's a plaintiff in a class-action lawsuit brought by civil rights lawyers who are challenging New York's system of public defenders, seeking to remedy a "persistent failure" to provide meaningful counsel to the poor.

A final conference before state Supreme Court Justice Eugene Devine in Albany was scheduled for Monday but has been rescheduled for Nov. 19 because of Hurricane Sandy. A person with knowledge of the case who requested anonymity because he is not authorized to speak about it said a settlement is expected, which could bring a long-awaited overhaul. The plaintiffs are asking the judge to force the state to take over the cost of providing public defenders from counties.

While the complaint was filed five years ago, decades of research indicate that New York's public defender system, which places both the structural and fiscal burdens of operations on counties, is inadequate, and can lead to violations of the United States and New York constitutions.

Even before the lawsuit, a 2006 report from the New York State Commission on the Future of Indigent Defense Services, which was established by then-Chief Judge Judith Kaye, described the situation as an "ongoing crisis" and concluded that "nothing short of major, far-reaching reform" can bring the state into constitutional compliance.

The report recommended a state takeover to properly fund public defender offices and enforce standards, and for many in the legal community, the hope is this lawsuit will force the state to do just that. It seems to be a possibility, in part because New York's Court of Appeals, the highest court in the state, overturned a dismissal of the case in 2010.

Corey Stoughton, lead attorney for the plaintiffs and a lawyer with the New York Civil Liberties Union, said inadequate counsel undermines the entire justice system. "The issue is very much linked to wrongful conviction."

Winbrone was saved from that fate. Her late husband's family submitted written statements to the court saying he admitted placing a gun in her car to frame her after a domestic dispute earlier that day. Prosecutors eventually dropped the charges.

She said she hopes the lawsuit will prevent similar incidents.

The suit was filed in the name of Kimberly Hurrell-Harring and 19 others charged with crimes in Onondaga, Ontario, Schuyler, Suffolk and Washington counties, yet the "failings" and "types of harms suffered" are "by no means limited or unique" to those counties, the suit claims.

Problems it lists include excessive numbers of caseloads, disparity in pay and resources compared with those for district attorneys, and delays in appointing counsel.

Jonathan Gradess, president of the New York State Defenders Association, said these inadequacies are so ubiquitous that the NYCLU, which filed the suit with the New York City-based law firm Schulte Roth & Zabel, "could have thrown a dart at a map of New York and decided on the counties that way."

While the suit doesn't contain examples of cases gone wrong in the Capital Region, the practices known to reduce public defenders' effectiveness occur here, too.

For example, every county in the region fails to meet caseload guidelines set by the American Bar Association, which recommends that no assigned counsel take more than 150 felonies or 400 misdemeanors in a year. Nowhere in the state is any caseload cap enforced, except in New York City.

The prosecution is responsible for every case, but about 80 percent of people who face criminal charges cannot afford a lawyer and require appointed counsel.

Saratoga's lead public defender, John Ciulla, said excessive workload "is getting to the point where we have very little time to accomplish anything meaningful for our clients." His attorneys each handle the caseload equivalent of 738 misdemeanors per year.

Ciulla said county supervisors have "allowed a great disparity to develop" by increasing staff and resources for the district attorney's office while the public defender's resources remain stagnant. Currently, 15 full-time and five part-time district attorney lawyers and seven full-time public defenders work the 24 courts spread across the large geographic area of Saratoga County.

Even access to necessities such as a client's criminal history can be difficult for public defenders to obtain. Prosecutors, however, who work closely with police departments and

other government agencies, have little difficulty.

Not only in resources is there a disparity. Prosecutor's employees are usually better paid. Saratoga County is the only county in the Capital Region where district attorneys and public defenders have parallel pay grades.

Schenectady's chief public defender, Mark Caruso, wrote in an email, "I don't want to get into the disparity in pay except to say there is a disparity in pay." He also had no comment on whether he has adequate resources, but "[n]eedless to say, our office is very busy."

Said Gradess: "This system is really hitting rock bottom. Hundreds of people are being chewed up," and it's not just those facing charges who suffer. "The stress these defense lawyers are under to do this work without resources is difficult to imagine."

A Schenectady public defender who would not give his name said that to get through their caseloads he and his colleagues "work overtime, unpaid."

All four of the Capital Region's counties have public defender offices, but jurisdictions can also use Legal Aid Society or assigned private lawyers under the "18-B" system, so-called because of the statute that created New York's county-based model.

Section 18-B was written into law in 1965 to comply with a U.S. Supreme Court decision that established the right to counsel under the Sixth Amendment, almost 50 years ago.

"The poor man charged with crime has no lobby," said then-U.S. Attorney General Robert Kennedy, following the Supreme Court decision. "Ensuring fairness and equal treatment in criminal trials is the responsibility of us all."

But it became for New York an unfunded and expensive state mandate. In 2011, the Office of Indigent Legal Services (OILS) began operation, the state's first program for guiding the quality of assigned counsel. Its director, Bill Leahy, said a settlement of the current lawsuit would be "in the best interest of the people of the state," and would help his office in "restoring New York State to compliance with the constitution."

OILS distributes funds to the counties, covering about 20 percent of total public defender costs; the counties come up with the rest.

Indigent defense in New York costs at least \$380 million a year, if county and state expenditures from 2011 are used as a baseline. But for people like Jacqueline Winbrone, it's a necessary outlay.

"I'm scared to go outside, because I might get locked up and not be able to come home," said Winbrone. "Being in jail for something you didn't do stays with you. It's like this cloud over me."

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Public defenders in the Capital Region

Figures represent disposed cases

- Schenectady County: 10 full-time, 5 part-time* attorneys

2011 caseload: 441 felonies, 4,451 violations/misdemeanors, and 1,222 family court cases

- Albany County: 17 full-time, 10 part-time* attorneys

2011 caseload: 1,938 felonies, 7,167 violations/misdemeanors, and 731 family court cases

- Saratoga County: 7 full-time attorneys

2011 caseload: 580 felonies, 2,601 violations/misdemeanors, and 566 family court cases

- Rensselaer County: 1 full-time, 10 part-time* attorneys

2011 caseload: 704 felonies, 2,371 misdemeanors/violations, and 508 family court cases

*Part-time attorneys are allowed to maintain their own private practices, but some work at or close to full-time hours

Source: New York State Unified Court System; local public defender offices