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25 Counties Get Grants to Provide Counsel at Arraignments

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ALBANY - Twenty-five counties will split \$12 million in the first state grants earmarked to provide criminal defendants with legal representation at their initial court appearances.

The state comptroller's office approved the distribution of the funds this week, William Leahy, head of the Office of Indigent Legal Services, said Wednesday.

The grants will fund counsel-at-first-appearance programs over the next three years in the 25 counties that were awarded the funding after submitting bids to the Office of Indigent Legal Services.

Ontario (\$750,000) and Monroe (\$724,218) counties will get the largest amounts, while Tompkins (\$117,000) and Schuyler (\$93,849) will receive the smallest grants.

Leahy said all 25 counties that applied for grants received some funding. Thirty-two other eligible counties did not submit bids.

New York City was not eligible. Leahy said the city's indigent defense system already provides counsel to criminal defendants at their initial court appearances.

Chief Judge Jonathan Lippman promised to create the grant program in his 2011 Law Day speech as a way of moving the state to closer conformity with the U.S. Supreme Court's mandate in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that all criminal defendants receive legal representation regardless of their ability to pay ([NYLJ, May 3, 2011](#)).

Leahy said the number of criminal defendants who are not represented when they are first in court, which in most cases is at arraignment, is unknown. But he estimated that the 25 counties qualifying for grants

Counsel at First Appearance Grants

These counties will divide \$12 million in grants over three years.

County	Total Grant Amount*
Albany	\$656,000
Broome	\$659,000
Cattaraugus	\$596,000
Cayuga	\$179,000
Chemung	\$393,000
Dutchess	\$615,000
Erie	\$593,000
Herkimer	\$330,000
Monroe	\$724,000
Nassau	\$660,000
Niagara	\$489,000
Oneida	\$558,000
Onondaga	\$588,000
Ontario	\$750,000
Oswego	\$150,000
Rensselaer	\$554,000
Rockland	\$417,000
Schuyler	\$94,000
St. Lawrence	\$587,000
Suffolk	\$747,000
Tompkins	\$117,000
Ulster	\$605,000
Westchester	\$621,000
Wyoming	\$163,000
Yates	\$156,000

*Rounded to nearest thousand.

SOURCE: Office of the State Comptroller

account for more than 50 percent of the arraignments held annually in the state outside of New York City.

"In some cases, it was just too big of a hurdle for some of the smaller counties to put the application in," Leahy said in an interview. "It was a fairly complicated procedure and a competitive process. So in the end, we had 25. I was hoping for more. But 25 is a pretty good number. It is a significant beginning."

Leahy said he had assumed that town and village court defendants were the ones who went without counsel. But he said the problem is also evident in city courts.

"The vast majority of the 61 city courts outside New York City did not routinely provide counsel at arraignment," Leahy said. "That was something that I think wasn't appreciated widely when we first started looking at this."

Among the counties receiving grants were Erie, Westchester, Tompkins, Ontario, Albany and Onondaga, which all have had pilot programs to improve their systems of providing lawyers at initial court appearances for more than a year.

According to Leahy, his office will sign contracts with each of the 25 counties specifying which legal services groups will participate.

Once the contracts are approved by the state comptroller and the state attorney general's office, the state will cut checks for the first year of the program. Funding should arrive in early October, Leahy said.

The legal services providers are public defenders, Legal Aid societies or assigned counsel programs, depending on which agencies provide counsel in each county.

The grant money is in addition to \$70.2 million the state is providing for indigent criminal legal services in the current fiscal year.

Leahy said grant applications are being considered for two other three-year programs involving counsel for the poor: \$12 million to improve the quality of counsel provided to criminal defendants outside of New York City and \$8.4 million to better instruct noncitizen defendants about the implications of criminal convictions on their immigrant status.

Indigent Legal Services is funded by money from fines on some criminal and traffic offenses, a portion of lawyer registration fees and fees for criminal background checks.

James Milstein, Albany County public defender, said it is "very, very important" for a lawyer to be present at arraignment, when critical decisions are made, such as setting bail.

He said that unless lawyers are there to stop them, defendants often make statements in court "they think is helpful to them, but which, in fact, is detrimental."

For instance, Milstein said a defendant may tell a judge after an alleged domestic disturbance, "I didn't hit my wife, we were just arguing," which could represent an unintentional admission to violation of an order of protection.

"Certainly there can be some great advantages to a client having an attorney by his or her side in an unfamiliar surrounding and in an emotional environment in which the attorney can provide competent professional advice," Milstein said.

Robert Lonski, head of the Erie County Bar Association's assigned counsel program, said an attorney can get up in court and say she just spoke to the defendant and confirm he is employed or in school full-time. "I know people think it

doesn't make that big a difference to the resolution of the case, but the people who are saying that are not standing there with cuffs on," Lonski said.

Stephen Acquario, executive director of the Association of Counties, said the allocation of the new grant money is welcome.

But he said it only represents a small step toward the state redressing how it has "unfairly" saddled counties with huge financial responsibilities to meet the burdens imposed by *Gideon* (NYLJ, March 22).

"For those counties that voluntarily stepped up, I only hope that after a period of time, when the state has had an opportunity to see how the counties used this grant money, that we can apply it statewide," Acquario said. "It is a step in the right direction."

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