

Public defender relief is coming

Local offices can hire more lawyers with \$1M from state

By Alysia Santo

Published 9:12 pm, Friday, May 23, 2014

Struggling with sometimes unmanageable caseloads, public defenders in the Capital Region may soon get a bit of relief as more than \$1 million in state money will soon flow into local offices to hire more attorneys.

The funds come from grants dispersed throughout New York by the Office of Indigent Legal Services (OILS), the state's first program for guiding the quality of assigned counsel.

Earlier in the year, OILS distributed \$12 million to 25 counties to fund programs that ensure defendants have attorneys when they make their first appearances before a judge.

Now OILS is working to disperse an additional \$12 million to counties across New York to reduce caseloads.

"There's just not enough hours in the day," said Oscar Schreiber, the public defender for Saratoga County. He said his office handled about 3,900 cases last year, split between seven attorneys.

Saratoga will receive \$255,463 over three years, which Schreiber will use to hire two part-time attorneys to cover evening courts and reduce the "excessive hours" being worked by current full-time staff members.

According to a Times Union analysis from 2012, each of the four Capital Region counties 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 (or an equivalent combination).

The Albany, Rensselaer and Schenectady public defender offices will each receive just under \$300,000 over three years, and plans for the money vary, though the public defenders from those counties declined comment.

According to the state's indigent defense program, Albany's grant will be used to hire one full-time public defender to specialize in felony trials, with training specifically in vehicular defense.

Rensselaer's contract involves hiring a managing attorney for each of the public defender and conflict defender offices, with a focus on incarcerated clients between 16 and 19 years old, and the Troy City Court caseload in general.

And in Schenectady, the money will enable attorney to reduce their caseloads by hiring a part-time public defender and conflict defender.

Nowhere in the state is any case load cap enforced, except in New York City. Excessive caseloads are said to affect a defender's ability to complete basic tasks for his or her clients, such as

interviews or other investigative work, and can contribute to wrongful convictions.

The U.S. Supreme Court established the right to counsel under the Sixth Amendment 50 years ago. Since then, courts have been required to provide counsel to criminal defendants who cannot afford to pay for an attorney, and in New York, where the burden is on the counties, that's become an unfunded and expensive state mandate.

In his 2014 State of the Judiciary address, New York's top judge, State Court of Appeals Judge Jonathan Lippman, said that "providers in many regions throughout the state are laboring under considerable stresses and bearing unsustainable caseloads."

Lippman said part of the problem comes from the fact that, unlike in other states, the cost for defendants in New York is a local responsibility, and the "quality of legal representation ... can vary greatly from jurisdiction to jurisdiction." This inconsistency has led to a class-action lawsuit from the New York Civil Liberties Union that challenges the state's patchwork approach.

Excessive caseloads and arraigning defendants without attorneys are just some of the deficiencies alleged in the suit, which was filed in 2007, and seeks to remedy a "persistent failure" to deliver meaningful counsel to the poor by forcing a state takeover.

asanto@timesunion.com 518-454-5008 @alysiasanto