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Public Defense, Public Shame

Our opinion: The state should follow its own studies and take over public defense for the indigent from counties, and while it's at it, better fund civil counsel for the poor, too.

Nearly a half-century after the U.S. Supreme Court reversed its own precedent and declared that access to counsel in a criminal trial is a fundamental right in America, New York has yet to secure that right for all its citizens.

It's not as if the state doesn't know how short it falls of the mandate of the Sixth Amendment, which states, in part, that, "In all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defence." It was told how much in 2006, when the New York State Commission on the Future of Indigent Defense Services, established by then-Chief Judge Judith Kaye, issued a report that called the state of public defense an "ongoing crisis" and declared that only "major, far-reaching reform" would fix it.

Here we are six years later, still seeing cases like that of Jacqueline Winbrone, a Syracuse woman who languished in Onondaga County jail for nearly two months, unable to afford bail or a lawyer. As the Times Union's Alysia Santo writes, the public defender who was assigned to Ms. Winbrone was unreachable by phone, and she met him, briefly and in court, only twice, exchanging few words. That hardly sounds like the kind of representation that would qualify as adequate. It was only the word of Ms. Winbrone's husband's family that he had placed a gun in her car in order to frame her that likely kept her from going to jail for criminal possession of a weapon.

Inadequate public defense is a problem across the state, say the New York State Defenders Association and the New York Civil Liberties Union. Court-appointed defense attorneys, some of whom work part time and have outside practices, carry clearly excessive caseloads, and in most counties are paid less and get fewer resources than prosecutors.

There is one encouraging note here: Ms. Winbrone and group of other defendants are waging a class action suit, challenging the "persistent failure" of this system to provide meaningful counsel to the poor. With the case headed for trial, there is talk that the state may enter into a settlement.

If so, it should incorporate the recommendations of the 2006 report, which included a state takeover of the public defense system that is now largely in the hands of counties. But it needs to be more than a change of responsibility from counties to the state. It should also include meaningful assurances from the state that it will adequately fund this clearly overloaded system. Taking over the system would also, incidentally, relieve counties of a largely unfunded state mandate.

And while the state is focused on this issue, it should not let the question of defense in civil cases be forgotten. While the Constitution only mentions criminal cases, the need for counsel to help fight a civil case to keep one's home or obtain the public assistance necessary to get food or health care is just as crucial, an issue emphasized recently by both Ms. Kaye's successor, Chief Judge Jonathan Lippman, and Attorney General Eric Schneiderman. Yet funding has gone down even as the need has risen.

A state that truly honors the spirit of the Constitution must be as concerned about people who could wrongly be put out on the street as those who could wrongly be put behind bars. Neither is being fairly treated by the state now.