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Antoine Thompson: State must overhaul indigent defense system

By ANTOINE THOMPSON

You would think 46 years is enough time for New York to live up to the promise that everyone charged with a crime has the right to effective counsel, as the U. S. Supreme Court ruled in the landmark 1963 Gideon v. Wainwright case.

Think again. Despite our self-professed commitment to equal justice, New York's county-based system of public defense has been declared an "ongoing crisis" by a commission named by former Chief Judge Judith S. Kaye. That report found a fractured, inefficient, underfunded and overburdened system, where undertrained lawyers try to handle unmanageable caseloads.

The Kaye Commission outlined a path to reform by creating an Independent Public Defense Commission to carry out a state takeover of the system, including the setting of standards for what constitutes an adequate defense.

Albany at long last appears poised to do just that. For reasons of justice and fiscal prudence, we can't turn back.

Right now, counties pay more than a quarter billion dollars annually — including around \$8 million in Erie County and \$1.6 million in Niagara County— for public defense services mandated, but not funded, by the state.

While county executives are concerned that the state will simply raise standards and leave local taxpayers to pick up the added costs, legislators are discussing capping county spending at an average of the annual costs in the three years ending in 2006. This would assure that counties will not have to cover added costs for a service the state should be paying for anyway.

Even in tough fiscal times, the proposed commission can be created without an impact on the general budget by drawing its \$3 million start-up costs from a special state fund set up to provide money to improve local public defense services.

But the greatest cost is borne by countless people incarcerated today because they could not mount an effective defense. With 80 percent or more of those charged with crimes qualifying for public defense, far too many endure an assembly line of injustice where they don't meet their lawyers until just before hearings where they are pressed into pleas that serve the system's efficiency before they get a chance to argue for their innocence.

Black, Puerto Rican, Hispanic and Asian legislative caucus members recently wrote to Gov. David A. Paterson and legislative leaders that public defense problems create a "ripple effect of wrongful incarceration, wrongful convictions and wrongful denial of parental rights" that affect entire communities. Rents don't get paid, jobs are lost and children are forced into foster care.

If lawmakers don't do this, a judge could in an active lawsuit charging that the current system's problems render it unconstitutional.

We shouldn't have to wait another 46 years. Justice has already been too long delayed and too long denied.

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