

Albany public defenders to start overnight shifts

Albany County to offer after-hour services to poor

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Public defenders in Albany County will soon take on new evening responsibilities so they can represent people arrested in the middle of the night.

The first appearance before a judge — the arraignment — is a critical stage for defendants. In Albany County and across the state, those too poor to afford an attorney are routinely arraigned without counsel, usually during overnight proceedings in town and village courts, Albany Public Defender Jim Milstein noted.

The state recently disbursed \$12 million to fund counsel-at-first-appearance programs among the 25 counties that applied.

Rensselaer County's public defender office applied for the same grant and received \$554,000, but could not be immediately reached. Schenectady and Saratoga County's public defender offices did not apply.

Albany County received a grant for \$656,000 to pay the county's 21 public defenders to take on rotating overnight shifts where they would be on call, available to travel to arraignments at courts around the county. Those duties will begin in March.

The money also will go to hire a part-time attorney for the alternative public defender's office, which represents clients when there is a conflict.

Without an attorney, defendants might act outside their best interest. "Sometimes people feel like they need to explain themselves to the judge, but they don't understand all the repercussions their explanation may have," Milstein said. Decisions such as bail amounts are set during that first court appearance, which can determine if someone is held in jail. Detention can have serious consequences, like loss of employment and housing. Because of this, New York's chief judge, Jonathan Lippman, has called arraignments and pretrial jailing of defendants without counsel "a fundamental failure that can no longer be tolerated."

Milstein said his office tested the idea for on-call public defenders in a Guilderland criminal court.

"We ended up having a very high percentage of individuals released on their own recognizance or getting a more reasonable bail than the court would have originally set," Milstein said. He cited an example in which a judge was going to set a bail as high as \$10,000 but changed his mind and released the person after hearing the defense's argument.

The U.S. Supreme Court established the right to counsel under the Sixth Amendment 50 years ago, but no direction was given as to how states were to meet this obligation, and it's been difficult for cash-strapped public defense offices across New York.

The state provides other funds to counties for public defense, including about \$70 million in 2013. Yet indigent defense in New York costs at least \$380 million a year, if county and state expenditures from 2011 are used as a baseline. According to the American Bar Association, 80 percent of people who face criminal charges cannot pay for a lawyer and still need counsel.

Over the years, the county has floated a number of ways to improve their ability to provide attorneys to indigent defendants. One idea was video arraignments, but some felt having a virtual attorney wasn't sufficient representation, and the state Office of Indigent Services, which administers the grants, opted only to provide funding to those counties that had proposals for in-person counsel.

The state also is trying to help lower caseloads, and Albany has tentatively been awarded \$299,528 to decrease the workload each public defender is expected to handle.

Excessive caseloads and arraigning defendants without attorneys are just some of the deficiencies alleged in a class-action lawsuit against New York that's been in litigation for over six years. It was first filed by the New York Civil Liberties Union in 2007, and seeks to remedy a "persistent failure" to deliver meaningful counsel to the poor by forcing a state takeover since New York's system places the responsibility of providing public defense on the counties.

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