From 0 to 60 in Public Defense—How Far Have We Come?

Sixty years ago, the U.S. Supreme Court decision in *Gideon v Wainwright* ushered in the modern era of public defense. Prior to that, an uneven set of laws, traditions, and practices—at best—existed across the country regarding provision of counsel for those unable to employ a lawyer in criminal matters. The Supreme Court had ruled in 1932, in *Powell v Alabama*, that in death penalty cases courts must assign counsel for those unable to hire a lawyer and unable to make their own defense due to disability such as mental illness or illiteracy. But only after *Gideon* and cases following it did creation of public defender offices and payment of assigned counsel with public funds become nearly ubiquitous. Still, much remains to be done before every person eligible for public defense receives the quality representation necessary to ensure fairness for all.

We are at a pivotal moment in New York. Five years into the statewide expansion of the *Hurrell-Harring* reforms, we know there’s a lot more to do to ensure equitable access to quality representation. We need more state funding to increase public defender salaries, to hire additional members of the defense team, including paralegals, investigators, and social workers, and build the necessary infrastructure to allow defenders to truly fulfill the constitutional mandate laid out in *Gideon*. We have come a long way, but we are at risk of slipping backwards. Public defenders are leaving the profession and if we don’t address the issues related to recruitment and retention, we will not have enough lawyers to provide representation to everyone who needs it. We have the ability to address these problems in our 2023-2024 New York State Budget.

**Gideon Day: March 18, 2023:** Right now, the New York State Legislature and Governor are negotiating the next state budget. At the top of the list of critical issues related to public defense is the need to raise the statutory rate of compensation for assigned counsel attorneys; that rate has not increased in nearly two decades. This has led to a shortage of lawyers, high caseloads that keep lawyers from doing everything that needs to be done in clients’ cases, and cascading effects like delays and errors that affect every part of the criminal legal and family regulatory systems. We have been here before and we need a permanent solution this year.

Discovery reform has been life changing for people accused of crimes, but the defense has not received fiscal support for implementation. This has left individual attorneys and small and large public defense offices struggling to pay for the necessary technology and staff infrastructure, and attorneys with high caseloads are unable to devote the time required to properly review discovery. The Governor made sure there were funds available for the prosecution to accomplish this, but in her proposal there were no funds allocated for the defense for discovery. There is no way for the system to operate in a fair and equitable manner if the defense doesn’t receive similar support. Fortunately, the Senate and Assembly one-house budgets released this past week have proposed defense funding to address this critical need. The Legislature and the Governor need to hear our voices and understand how important funding for discovery support and other defense services is. That is why on March 22, 2023, and throughout the budget process, NYSDA is in Albany advocating for defense funding.
NYSDA is advocating for family and parental defense funding as well. Litigants in family matters, and their children, suffer as well. The family regulatory system disproportionately targets Black and brown families and those living in poverty. When these parents and others are denied timely, quality representation due to underfunding they face the real possibility of losing their parental rights or custody of their children. The State has yet to accept major responsibility (under the 1972 Court of Appeals case In re Ella B.) to fund parental representation. It is time for the State to provide meaningful support for family defense legal services.

These crucial matters, and other budgetary and substantive questions currently under debate during the budget season, will determine how far New York has progressed in 2023 from where it was in 1963. The New York State Defenders Association (NYSDA) is advocating for justice in these and other areas. Celebrate Gideon’s anniversary by joining NYSDA’s defender community today! Contact your state representatives and the Governor to demand public defense funding. Thank your local public defenders. If you have any questions or want to learn more, please reach out to us at info@nysda.org. NYSDA appreciates all the work defenders do each day on behalf of your clients and the defense community. Happy Gideon Day!