

If You Cannot Afford an Attorney ...

In the *Gideon v. Wainwright* decision, the Supreme Court stated that if a defendant is poor, the government must appoint a lawyer to represent him or her. In *Miranda v. Arizona*, the Court found it necessary to mandate notice to defendants of their constitutional right to consult with an attorney.

The Court also instructed law enforcement that if a suspect says he or she wants a lawyer, the police must stop any interrogation until an attorney is present, give the suspect an opportunity to communicate with their attorney, and to have their attorney present during any subsequent questioning.

But where do these public defenders come from, who determines a defendant's financial eligibility and how are public defenders paid?

Across New York, public defenders are provided for under a plan devised by each county in accordance with County Law Article 18-B. This statute gives counties three options for creating a public defender system. Counties may establish county public defender offices, contract with a private legal aid society, or use a panel of private assigned counsel.

New standards for determining the eligibility of individuals seeking public defense for criminal court proceedings in the counties outside of New York City were released by the NYS Indigent Legal Services Office (ILS) on April 4, 2016. The first standard states, "An applicant shall be eligible for assignment of counsel when the applicant's current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for a competent defense, and the reasonable living expenses of the applicant and any dependents." A full report including additional criteria and procedures is available on the ILS's website at www.ils.ny.gov/content/eligibility-documents.

Regardless of the type of public defense system used, the bulk of the funding is currently provided by the county. In 2003, the state created the Indigent Legal Services Fund to financially assist counties in providing legal representation for persons unable to afford it. Despite every effort to create consistent and equal standards statewide, the quality and quantity of public defense across New York State continues to be an issue and varies greatly by location.

Look for current examples of someone being represented by a public defender in news reports in print or online. Imagine the process without representation as it was for Clarence Earl Gideon. As a class, discuss the difference.

*Final installment: **Do You Understand Your Rights?***



This is one of six Newspaper In Education features created to educate and celebrate Law Day 2016.

Sponsored by the Law, Youth and Citizenship Program of the NYS Bar Association and produced by the NYNPA NIE Program.