

Fall 1926

Public Defenders in Connecticut

Kenneth Wynne

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Kenneth Wynne, Public Defenders in Connecticut, 17 *Am. Inst. Crim. L. & Criminology* 359 (1926-1927)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

IV
PUBLIC DEFENDERS IN CONNECTICUT

KENNETH WYNNE*

During the past decade there has been a growing realization among thoughtful and well-informed leaders of public opinion that the American courts have not kept pace either with the needs or the opportunities of a changing social organization. Progress and advancement has been the rule in business, in science, in invention and mechanics, in medicine, in fact in nearly every activity of human development. The courts alone have been lagging in the rear, until now an awakened conscience has manifested itself in widespread proposals, reforms, and innovations.

The defects that we lawyers suddenly realized existed in our calling and our courts fell into five general groups; and the demand went forth for (1) a simplification of legal procedure, (2) the creation of the office of public defender, (3) the establishment of domestic relations courts, (4) the establishment of simple and effective small claims courts, and (5) the furnishing of legal advice and assistance to the thousands not in a position to consult and pay attorneys.

Connecticut has rather gloried in its staidness as the land of steady habits, but in the movement looking to the reform of legal procedure she has taken a place in the vanguard. Not content even with the general wisdom of the poet's adage,

"Be not the first by whom the new is tried
Nor yet the last to lay the old aside."

Connecticut is the first state in the Union to put into effective operation a statute establishing public defenders for the several counties.

Prior to 1917 the practice obtained in Connecticut of assigning counsel to indigent prisoners at the opening of a criminal term of the Superior Court. The statute provided for a fee of \$5 in cases where a plea of guilty was entered and \$10 where there was a trial. It was the custom in those days for young attorneys to sign a paper containing the names of those willing to be assigned, and this list was placed before the judge when court opened. With more leisure than anything else it can readily be imagined how many trials were staged for experience and the double fee. The expense to the State of the trial did not

*Member of the New Haven County Bar.

enter into the equation, and the writer used to think that it would have been a better plan for the State to pay \$10 for pleas of guilty and \$5 for the trial.

It should be remarked in passing that in murder cases where the accused had no counsel, it was the custom for the court to specially assign a competent attorney to undertake the defense, and the compensation allowed was always adequate and just. It might also be added that under the present practice in Connecticut in murder cases special counsel are still frequently assigned where the public defender is pressed with other cases or for other good reason, although the public defender often cares for capital cases as well as for all other classes of cases.

The first public defender statute was passed in 1917, and the text of that law which was the entering wedge for the present statute was as follows:

"The judges of the Superior Court at their annual meeting in June, or any judge thereof designated to hold any criminal term of said court, at least thirty days prior to the opening of such term, shall appoint an attorney-at-law of at least five years' practice, to act as attorney in the defense of all persons charged with crime in said court when such person is without funds sufficient to employ counsel for such defense. At the close of such term, such attorney having rendered services under the provisions of this section shall file with the court an itemized statement of expenses necessarily incurred and of the services rendered by him during such term, and the court shall allow a reasonable sum for such services and expenses, which shall be taxed and paid as other costs in criminal cases."

The general subject of "Justice and the Poor" engaged the attention of the Connecticut State Bar Association at its annual meeting in 1920. A special committee consisting of Thomas Hewes, Esq., of Farmington, Chairman; Thomas M. Steele, Esq., of New Haven; David S. Day, Esq., of Bridgeport; Frederick H. Wiggin, Esq., of New Haven, and Allyn L. Brown, Esq., of Norwich, had been appointed to consider the general subject. At the meeting in question Professor E. M. Morgan of the Yale Law School delivered an address on "The Legal Clinic" and Thomas Hewes, Esq., read a paper on "Denial of Justice to the Poor and Suggested Remedies."

Both of these gentlemen touched upon the subject of the Public Defender and each one acknowledged his obligation for material and inspiration to Reginald Heber Smith, author of the bulletin "Justice and the Poor" distributed by the Carnegie Foundation for the Advancement of Teaching.

At the annual meeting of the Connecticut State Bar Association in 1921 the special committee above referred to presented among others a draft of a bill concerning the appointment of public defenders, and this bill was presented to the General Assembly and largely due to the efforts of the Connecticut State Bar Association and especially the committee headed by Mr. Hewes, this particular bill was passed and became Chapter 129 of the Public Acts of 1921.

In 1923, Section 1 of this act was amended. No further changes have been made, and the present law in Connecticut therefore consists of the combined enactments of 1921 and 1923. For the convenience of those interested, the existing law on the subject is here given, the first section being that enacted in 1923, and the remaining sections being what was left standing of the law of 1921:

Section 1. "The judges of the Superior Court shall, at each annual meeting in June, appoint an attorney-at-law, of at least five years' practice and residence, in each county in the state, except New Haven county, in which they shall appoint two such attorneys-at-law, one for the New Haven district, and one for the Waterbury district, to be public defenders thereof for the ensuing year and shall, from time to time, make such rules and regulations as may be necessary for the conduct of such office. Each such public defender shall act as attorney in the defense of any person charged with crime in either the Superior Court or the Court of Common Pleas in the county for which he shall have been appointed, except New Haven county, in which the public defender for the New Haven district shall act as attorney in the defense of any person charged with crime in either the Superior Court or Court of Common Pleas, and the public defender in said county for the Waterbury district shall act as the attorney for any person charged with crime in either the Superior Court or District Court of Waterbury, when such person shall be without funds sufficient to employ counsel for such defense. The funds, if any, which such accused person may have in excess of ten dollars, shall be collected by the public defender and paid to the clerk of the court in which the costs shall have been taxed, to be credited on account of the costs and expenses of the case. The public defender may, in accordance with such rules as may be adopted by the judges of the Superior Court, act, within the county or district for which he shall have been appointed, as attorney for the defense of any such accused person upon any preliminary hearing before any court in the state or before any committing magistrate."

Section 2. "At the close of each criminal term of such Superior Court, Court of Common Pleas or District Court of Waterbury, such attorney having rendered services under the provisions of the foregoing section shall file with the clerk an itemized statement of expenses necessarily incurred and of the services rendered by him during such term and any such preliminary hearing, and the court shall allow a reasonable sum for such services and expenses, which shall be taxed and paid as other

costs in criminal cases in either said Superior Court, Court of Common Pleas or District Court of Waterbury."

Section 3. "The judge presiding at any term or session of the Superior Court or Court of Common Pleas in any county, or of the District Court of Waterbury, may, upon application of the public defender for such county, appoint an attorney other than the public defender to represent any person charged with crime in any criminal court in such county other than the said Superior, Common Pleas or District Court, if, in the opinion of said judge, such appointment should be made, and in such case the judge of the court in which such trial was had shall tax and allow to the attorney so appointed an amount not exceeding five dollars per diem for services in conducting such defense and a reasonable sum for necessary disbursements in connection therewith, such amount to be paid as are other court expenses."

Section 4. "Except as provided by the terms of this act, no allowance shall be made or taxed for the payment of services rendered or expenses incurred by attorneys for the defense of persons charged with crime."

At the present time the Public Defenders for the several counties in the State are as follows:

Hartford: John F. Forward
 New Haven: Samuel E. Hoyt
 New London: Charles L. Stewart
 Fairfield: Robert G. De Forest
 Windham: Charles L. Torrey
 Litchfield: J. Clinton Roraback
 Middlesex: Daniel J. Donahoe
 Tolland: Robert H. Fisk

It will be noted that provision is made for the expense of investigation and preparation of cases. This is at once the greatest power vested in the defender and the most effective feature of the law. It is generally known that the most valuable part of a person's defense is painstaking preparation out of court. In proper cases this is exercised by the Public Defenders and frequently it has been found necessary in several instances for a Public Defender to take trips for long distances out of the State in the course of investigations.

At the present time the compensation is fixed for each county at a definite sum by the judges at their annual meeting. In New Haven County, for instance, the compensation is \$2500 a year and the reasonable expenses incurred are approved by the presiding judge at the end of each criminal term. Formerly the Public Defender's bill was submitted at the end of each term and when approved by the presiding judge was paid. It was found that this system was uncertain and unsatisfactory, and so the judges decided to adjust the compensation in

each county in accordance with the criminal business and bearing a certain proportion to the salary of the State's Attorneys in the several counties, there being a variation in the salaries of the latter.

There is a statute in Connecticut under which a judge is empowered to open the case of a person convicted by him and sentenced to imprisonment, suspending further execution of the sentence and placing the case in the care of a probation officer. By a rule recently adopted by the judges, this power is exercised only in cases where the application is referred to the Public Defender for his investigation and report. This indicates an extension of the work of these officers and suggests the further increase in their duties. In a number of cases it has also been the practice of presiding judges in divorce cases brought on the ground of insanity where the defendant is an inmate of a state institution to appoint the Public Defender as guardian ad litem to safeguard the interests of the defendant.

The law in Connecticut has proven a success. There is no doubt that the system is much more satisfactory than the former practice of assigning inexperienced young attorneys who oftentimes imperiled the liberty of accused persons who might have a good defense. Under the present system there is an officer charged with the responsibility of carefully investigating the story of the accused person, and either presenting a defense in court, or at least being in a position to lay before the judge the facts and circumstances from the viewpoint of the accused so as to enable the judge to reach a more intelligent decision than was possible in the days when the State's Attorney's presentation was practically the only reliable information available. Now the judge realizes that the Public Defender is as much an officer of the court as the State's Attorney and that his judgment and his conclusions are entitled to as much weight and consideration as the latter's.

In conclusion the best comment that can be made regarding the law is that it appears to have the very general approval of the bench and the bar as well as the general public.