

# Background and Purpose of the ILS-195

October 31, 2018

## **Background and Purpose of the ILS-195**

On April 1, 2019, a change to New York County Law section 722-f will come into effect making the Office of Indigent Legal Services the recipient of ‘an annual report’ from providers of representation. Previously, this report was collected by the Office of Court Administration and was known as the ‘UCS-195’. ILS is taking the opportunity of this transition to revise the UCS-195 and replace it over the coming years with a new form to be known as the ‘ILS-195’. This document explains the purpose of the new form and explains the information it seeks to collect.

Immediately below, we provide a general overview of how this form fits into ILS’ data collection plans generally (titled ‘What the ILS-195 will and will not do’). Later in the document, we provide a specific explanation for the data sought under every single question.

### **What the ILS-195 will and will not do**

The ILS-195 is essential for ILS to collect the data needed to implement the expansion of the Hurrell-Harring reforms statewide. It will help ILS collect data pursuant to its enabling legislation while assuring continuity with older data already on file. But, as important as it is, the form only one approach to research and data collection at ILS. The paragraphs below describe how the form assists ILS achieve its specific goals.

#### *Monitoring progress toward implementation of statewide expansion*

Data collected with the introduction of the new form will allow ILS to monitor provider caseloads and staffing, and to track progress toward compliance with caseload standards in 2023. The new form will also allow ILS to monitor the number of arraignments conducted and some information about arraignment outcomes. Regarding quality of representation, the new form will collect data regarding the services attorneys provide, case outcomes, and other matters relevant to the assessment of quality of services. It also includes several narrative sections to allow providers to contextualize the quantitative data, or report additional information regarding the quality of representation.

The form does not track actual arraignment coverage, however, which ILS will have to do another way. In addition, although the form collects a range of data possible relevant to representation quality, it does not imply any single approach to measuring quality. To assess the quality of representation, ILS may draw on the data collected by the form, but will need to make case-by-case judgments on how to interpret the data from individual programs, considering the context in which they work among other factors. ILS hopes form will go some way toward collecting this contextual information through the inclusion of open-ended questions where providers are invited to submit any information and documents other than those specifically requested that they believe will assist ILS in its assessment.

#### *Continuing data collection*

ILS has been collecting data on providers since its inception and has a rich dataset containing certain key indicators going back to 2012. Importantly, this new form will allow the

continuation of that data collection and will allow seamless comparisons of provider data from 2012 forward. By continuing the use of parts of the UCS-195 for 2019 and 2020, and then mandating submission of both Parts 1 and 2 of the new form beginning in 2021 (which solicit data in the same areas, albeit with expanded scope) ILS will be able to maintain a seamless history of data collection.

#### *Facilitating 2021 caseloads reassessment*

All providers will be required to submit accurate caseload data according to the new definitions in 2021. This will facilitate the analysis of caseload relief funding needs under the new standards in a more refined manner than was possible developing the 2017 Caseloads Plan.

#### *Compliance with Executive Law*

ILS is mandated to collect a range of data pursuant to Executive Law §832-3-b. Our existing data collection covers matters addressed in subsections i, iii and vi of that statute. The new form will expand annual reporting to cover subsections ii and v, and some of subsections vii and viii. The new form does not cover subsections iv, ix, or all of vii and viii, and ILS will assess other strategies for data collection in those areas.

#### *Monitor for supplanting problems*

The new form will allow us to track whether spending and staffing increase or decrease overall over time within providers. In conjunction with the annual financial report required from counties that distinguishes state and local spending on services, we will have important information on whether counties are sustaining their funding commitments over time.

#### *Collect data on eligibility*

The new form will collect some data on eligibility, but will not collect data that match the data required to be tracked by the Eligibility Criteria & Procedures. The new form collects data on cases that are countable under ILS definitions for counting cases, which apply only after advice and/or representation has begun to be provided. The Eligibility Criteria and Procedures, by contrast, refer to data on all applications for representation and application outcomes – a potentially larger set of cases than those where advice and representation were performed.

## **Explanation of specific data sought in the new form**

In this section, we explain the rationale behind the data collected in each question on the form.

### **Part 1**

#### **How many individuals were on staff at this provider on July 1 of last year in the following categories?**

This question requests the number of employees in the provider in various categories. This allows ILS to track the number of persons engaged in providing indigent legal services statewide. It also provides a

basis, in conjunction with responses to question 2, to compute the ratio of supervisors to line attorneys in a provider.

**Of the attorneys on staff on July 1 of last year, how many supervised the work of others?**

This question allows ILS to compute the ratio of supervisors to line attorneys. These data are useful to ILS in fulfilling its mandate under Executive Law §832-4-c to assure defender “receive effective supervision and training.”

**How many hours is a ‘full-time’ employee expected to work weekly in this provider?**

This question provides context for the questions that follow regarding ‘FTE’ employees. It clarifies the expected hours of work that an FTE employee must work weekly in the provider.

**How many full-time equivalent (FTE) staff were employed by this provider on July 1 of last year?**

The collection of FTE staffing information in institutional providers is critical to the application of ILS’ caseload standards, which stipulate the number of cases that a full-time attorney may handle annually, on average, within a provider.

**Of the FTEs reported in the previous question, how many work on criminal representation, and how many on family representation, whether at the trial or appellate level?**

Only by breaking down the FTE staff within a provider between criminal and family court work are we able to apply ILS’ caseload standards for criminal cases appropriately.

**Please report the provider’s total expenditures on personal services (PS) last year.**

Personal services expenditure data are collected by ILS pursuant to its mandate under Executive Law §832-3-b to collect and receive information and data on “the salaries and other compensation paid to individual administrators, attorneys and staff providing such services,” as well as “the amount being spent on ancillary services such as investigators, support staff, social workers and expert witnesses.” In addition, these data may be used to compute funding needs for providers seeking to hire new staff.

These data may also be used in conjunction with data reported in question 5 to compute personal services expenditures in criminal and family court respectively. This will be helpful when computing hiring funding needs for criminal or family representation specifically. Note that we do not ask providers themselves to break out personal services expenditures by practice area, but rather expect to compute them using data from questions 5 and 6.

**Please report the provider’s total expenditures on all other than personal services (OTPS) items last year.**

OTPS expenditures allows ILS to track provider expenditures on contracted investigators, social workers, expert witnesses, and other staff, pursuant to its mandate under Executive Law §832-3-b to collect and receive information and data on “the amount being spent on ancillary services such as investigators, support staff, social workers and expert witnesses.” This also gives ILS some insight into the extent to

which providers are using these services, especially when viewed alongside the data collected in questions 3, 4 and 5 regarding the numbers of staff in such positions.

**Of the OTPS expenditures reported in the previous question, how much was dedicated to criminal representation, and how much to family representation, whether at the trial or appellate levels?**

This break-out of expenditures by representation type is necessary for us to implement reforms under Executive Law §832-4 which are directed exclusively at criminal representation. In particular, this (along with the data collected in questions 3, 4 and 5) will assist us evaluate the provision under section c that providers “have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients.”

**Please report the total of any other expenditures for this provider last year not reported above.**

This allows providers to report any other expenditures during the year, so that ILS will have a complete view of the year’s expenditures. This allows us to fulfil our mandate under Executive Law §832-3-b to collect data and information on “the actual expenditures currently being made in each county on such services.”

**How many attorneys were paid over the past year for work in criminal and family court cases respectively? [Asked only of assigned counsel providers.]**

This allows us to assess the availability, and the variety, of attorneys accepting assignments, especially when set alongside caseload data collected in Part 2.

**Is there anything else you’d like us to know about the information submitted in this Part?**

**Are there any documents you would like to share with us in addition to the information submitted in Part 1? If so, please upload here.**

These allow providers to supply additional information to contextualize the data in Part 1. These questions are both optional.

## **Part 2**

**Please report the total number of new cases opened in the following categories last year.**

**[Assigned counsel providers not informed of all newly opened cases are asked an alternate question as follows: Please report the total number of closed cases closed in the following categories last year.]**

Caseload information is essential for ILS’ assessment of caseload standard compliance in all providers. Standard compliance is mandated under Executive Law §832-4-d, and ILS is required to assess whether it has been achieved by 2023.

**Please report the total number of cases pending in the following categories on December 31 of last year.**

Pending caseload is a concern for providers which may be handling a backlog of cases. Not expressly regulated by caseload standards, we nevertheless capture it here as an important contextual factor in understanding providers' overall caseloads.

**Please report the total number of hours of attorney time reported for cases closed in the following categories last year. [Assigned counsel providers only are asked this question.]**

Hours-per-case information is essential for caseload standards compliance assessment in assigned counsel providers. Standard compliance is mandated under Executive Law §832-4-d, and ILS is required to assess whether it has been achieved by 2023.

**Please note the types of any other cases in which this provider supplied representation which are not included in the counts reported above, and where possible note the numbers of those cases.**

**Is there anything else you'd like us to know about the information submitted in this Part?**

**19.20. Are there any documents you would like to share with us in addition to the information submitted in Part 2? If so, please upload here.**

These questions allow providers to supply additional information to contextualize the data in Part 2. These questions are all optional.

### **Part 3**

**Please report the total numbers of arraignments in criminal cases at which you provided representation in the last year.**

This question collects data on arraignment outcomes and allows ILS to monitor the outcomes of defendants receiving representation at arraignment from providers. Of course, arraignment outcomes may differ for reasons providers cannot control. ILS nevertheless considers it pertinent to monitor such differences as one way to identify anomalies (such as providers whose clients receive unusually poor arraignment outcomes), and to prompt further assessment by ILS to discover the reasons for such anomalies.

**Please report the total number of criminal cases closed in the last year, and the number in which the following services were provided.**

Pursuant to ILS' mandate under Executive law 832-4-c to assure providers "have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients," ILS seeks to track the rate at which such services were in fact used. ILS does not expect providers to meet specific targets on these numbers, but may review them to identify providers who are outliers on these metrics, which may prompt further assessment by ILS to discover the reasons for such outliers.

**Of the felony, misdemeanor and violation cases disposed in the last year, please report how many were: [Question asks about dispositions of trial cases.]**

**Please report the manner of disposition for all appellate cases in this program in the last year. [Question asks about dispositions of appellate cases.]**

The dispositions of cases provide some indication of the outcomes of clients served by providers. Dispositions vary for a wide variety of reasons, of course, many of which are not within providers' control. Nevertheless, ILS seeks such information to understand whether providers' clients are getting especially good or bad outcomes, which may prompt further assessment by ILS to discover the reasons for such outcomes. Further basis for this data collection is provided by Executive Law §832-3-c where ILS is mandated to track data and information on "the types, nature and timing of dispositions of cases handled by attorneys providing [indigent legal] services."

**In the last year, in how many closed appellate cases were the following activities performed?**

ILS has selected these metrics to assess the services provided to appellate clients. ILS does not expect providers to meet specific targets on these numbers, but may review them to identify providers who are outliers on these metrics, which may prompt further assessment by ILS to discover the reasons for such outliers.

**Please report the total number of criminal cases closed in the last year, broken out as follows.**

ILS has in the past opted to apply different weights to cases that providers handled only briefly. The data collected here would allow ILS to do that in the future if necessary.

**In how many criminal cases closed in the last year were the following true? [Asks about cases where representation ended prior to disposition in court.]**

These data allow ILS to track the extent to which cases end prior to disposition by a court, and will also provide a basis for tracking the impact of *Raise the Age* legislation.

**In how many felony cases closed in the last year were clients categorized as an "Adolescent Offender"?**

**In how many violent felony cases closed in the last year were clients categorized as a Juvenile Offender (13-15 years old)?**

These questions solicit basic data on the frequency with which providers represent youth who are arraigned in Youth Parts. This will provide a basis for tracking the impact of *Raise the Age* legislation.

**Is there anything else you'd like us to know about the information submitted in this Part?**

**Are there any documents you would like to share with us in addition to the information submitted in Part 3? If so, please upload here.**

These questions allow providers to supply additional information to contextualize the data in Part 3. These questions are all optional.