



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

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Improving the Quality of Mandated Representation Throughout the State of New York

INDIGENT LEGAL SERVICES BOARD

September 28, 2018

Association of the Bar of the City of New York

AGENDA

- I. Approval of Minutes of June 1, 2018 Meeting (attached)
- II. Allocation of FY 2018-2019 Aid to Localities Appropriation **(vote)** (memo attached)
- III. ILS Budget Request for FY 2019-2020 **(vote)** (memo attached)
- IV. Report to the Board on status of Statewide HH Implementation (Joanne Macri)
- V. Report to the Board on status of Parental Representation (Angela Burton)
- VI. Highlights Letter to *Hurrell-Harring* Parties (attached)
- VII. Report on Raise the Age Task Force meeting (Bill Leahy) (agenda attached)
- VIII. Report on ILS Criminal Defense Advisory Committee (Bill, Joe, Joanne) (agenda attached)
- IX. Next Meeting of the Board **November 30, 2018**

Minutes for the Indigent Legal Services Board Meeting

June 1, 2018

11:00 A.M.

New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore, John Dunne, Carmen Ciparick, Lenny Noisette, Sheila DiTullio, Vince Doyle (by telephone), Mike Breslin (by telephone), Suzette Melendez (by telephone)

ILS Office Attendees: Bill Leahy, Joseph Wierschem, Angela Burton, Patricia Warth

Guests: Kathy Dougherty, Laurette Mulry

Minutes recorded by: Mindy Jeng

Chief Judge DiFiore congratulated Suzette Melendez on her appointment to the Board. She welcomed her as the newest member. Chief Judge DiFiore also congratulated John Dunne on his upcoming 60th wedding anniversary.

I. **Approval of April 13, 2018 Minutes** – A motion was made to approve the minutes and seconded. The minutes were unanimously approved by the Board.

II. Update on *Hurrell-Harring* Implementation

Patricia Warth from the ILS Office invited two indigent legal service providers to the Board meeting, Laurette Mulry, Attorney-in-Charge of the Legal Aid Society of Suffolk County and Kathy Dougherty, Executive Director of the Onondaga County Assigned Counsel Program. Both providers have demonstrated a profound commitment to improving the quality of mandated presentation. Suffolk County Legal Aid Society is the largest institutional provider and Onondaga County Assigned Counsel Program the largest assigned counsel program funded by the settlement monies. Both providers have been very thoughtful and creative in using *Hurrell-Harring* funding.

Legal Aid Society of Suffolk County

Laurette Mulry, Attorney-in-Charge of the Legal Aid Society of Suffolk County described how HH funding has transformed indigent defense in Suffolk County. Prior to receiving ILS-funding, Suffolk County Legal Aid had to fight for every penny in their budget. The funds from *Hurrell-Harring* enabled Legal Aid to hire an additional 45 staff members and their organization grew by 50%. In addition to attorneys, they have hired social workers, criminal immigration

specialists, Spanish interpreters, and others. All these individuals are now a vibrant part of the work force at Legal Aid.

Prior to the lawsuit, Laurette said that Legal Aid attorneys were burdened with high caseloads, insufficient funding and resources, and had difficulties communicating with clients. The office had been structured so that there were few opportunities for advancement and only informal training. In short, the attorneys always had to learn to do more with less. *Hurrell-Harring* changed this dynamic. It brought hope and optimism to Legal Aid. Attorneys now have access to interpreters and online legal research and the office is able to provide merit-based stipends to retain productive staff.

Legal Aid developed a plan for caseload relief to not simply add bodies to the office, but to create a whole new hierarchy. Many mid-level supervisors and deputy bureau chiefs were added, which provided promotional opportunities for longtime staff. A team-based approach to delivering services was instituted; these teams consisted of a senior attorney and five to six staff attorneys. The teams include a specialized part team, DWI team and pre-indictment felony team.

Legal Aid has hired a training director and paralegals. Legal Aid has ensured that many of their attorneys had diverse backgrounds; currently there are at least five Spanish-fluent attorneys. There is a better support system in place for new attorneys and supervisors are available to give guidance. Laurette noted that the Bureau Chief for the District Court sends out monthly newsletters and sponsors motivational activities for team members. Legal Aid also provides training to help their lawyers understand collateral consequences, implicit bias, and other important issues with the criminal justice system. Legal Aid has a “breaking barriers” program to help individuals clean up their rap sheets so they are in a better position to apply for jobs and educational programs.

Laurette noted that challenges still exist, including disparities in funding between the District Attorney’s office and Legal Aid, judges who are still resistant to change, and the very time-consuming hiring process. However, overall there is optimism and hope.

Board members commented about the exciting developments in Suffolk County. One board member noted that the Legal Aid Society had strong management in place and was strategic in using new resources. Another board member inquired about how the relationship with the judiciary can be improved. Laurette stated that while some judges were resistant to accepting the ILS eligibility criteria, there had been improvement over time.

Onondaga County Assigned Counsel Program

Kathy Dougherty gave a presentation on the Onondaga County Assigned Counsel Program. As a former Assistant County Attorney, she said that she had defended Onondaga County in the *Hurrell-Harring* lawsuit and was very familiar with the case and heavily involved in

the settlement negotiations. She noted that the Assigned Counsel Program is the primary criminal defense provider in Onondaga County. Kathy said that the settlement was incredibly important for the county, but that the director and deputy director of the Assigned Counsel Program were resistant to change. As a result, the county put out a RFP for a new provider. There were three proposals submitted: Hiscock Legal Aid Society, Assigned Counsel Program, and a third proposal from a group of 18-b attorneys. The county selected the Assigned Counsel Program. Soon thereafter, the director and deputy director resigned and Kathy was appointed director of the program.

The Assigned Counsel Program has faced many challenges in implementing the settlement. Initially, the Onondaga County legislature doubted that *Hurrell-Harring* funding would be forthcoming so it took some persuasion to get them to accept funds to implement reforms. The Assigned Counsel Program had antiquated systems for payroll, paper management, outmoded accounting practices, did not have an online presence, no e-mail address, and relied on a fax machine to communicate with panel attorneys. Kathy implemented changes and created a website. Attorneys can now send in vouchers by e-mail. A newsletter was created to convey important information, improve morale, list upcoming trials, inform attorneys of CLEs, and help attorneys consider immigration consequences.

The Assigned Counsel Program makes mentor attorneys and training available to new attorneys. Specific resource attorneys have presented information about certain topics and are available to the panel members. The program encourages second chairs at trials, and the second chairs get paid for their work. Assigned Counsel panel attorneys have had nine homicide acquittals, which until recently is unheard of in Onondaga County.

Kathy reported that a variety of challenges remain. Some panel members distrust making changes because they do not perceive the old system as "broken." Some judges still prefer appointing "core attorneys," which can make caseload distribution and quality representation an issue.

The office is using iPads to speed up voucher processing. The Program has a new office space and has gone from three employees and two college student volunteers to 20 employees. There has been a 40% increase in providing representation at arraignment.

A board member asked whether mentor attorneys were compensated for their time and Kathy replied that they were compensated.

III. Report on the Commission on Parental Legal Representation

Angela Burton gave a report on the first meeting of the Commission on Parental Legal Representation. Angela stated that there was full participation at the first meeting. Judge Marks gave an encouraging introduction and stated that OCA would provide the Commission with whatever resources it needed. The focus and emphasis of the Commission is on providing

top-rate representation for poor people across the state and assessing the current landscape of Family Court representation.

There was much discussion at the Commission meeting about how litigants gain access to counsel. There was interest in revising the practice around the state and the pertinent statutes. There was a consensus that litigants should have counsel at the first court proceeding. Angela noted that the New York State Bar Association adopted as a legislative priority a resolution to raise the compensation rates for 18B attorneys. Angela stated that there is always a need for more support and training for 18B attorneys. The consensus at the meeting was that whatever recommendations emerge, the proposals should be client-centered. Participants also noted that there should be uniformity and consistency across the state.

Angela stated that the Commission will have four public hearings, covering each of the four judicial departments. A report will be issued by the end of the year.

IV. Statewide *Hurrell-Harring* Implementation – This discussion was deferred to the following Board meeting.

V. Raise the Age Task Force

It was announced that Bill Leahy will be a part of the Raise the Age Task Force. This will be the first time that all of the stakeholders will be at the table. Bill will have more to say following the first meeting.

VI. Summary of Recent Employment Offers, Interviews, and Job Postings

Bill reported that ILS made an offer for Assistant Parental Representation Counsel. ILS has also filled three vacancies on the *Hurrell-Harring* team and have completed interviews for the new position of Administrative Officer. The Administrative Officer will play an important role as more contracts and fiscal opportunities are in play. ILS is also expanding the grants unit.

VII. Invitation to Bill Leahy and Andy Davies to attend Bureau of Justice Assistance Training and Technical Assistance Meeting

Bill noted that he and Andy Davies would be traveling to the U.S. Department of Justice next week for a meeting of criminal justice stakeholders.

VIII. Remaining 2018 Board Meetings

Bill stated that the September 21 meeting will be at 1:30 p.m. November 30 is the last meeting of the year.

IX. Executive Session

A board member moved for the meeting to go into Executive Session. The motion was seconded and unanimously approved by the Board.

A motion was made to adjourn the meeting and seconded. The meeting was adjourned at 1:19 p.m.

To: Indigent Legal Services Board

From: Bill Leahy

Re: Allocation of ILS FY 2018-19 Aid to Localities Appropriation (\$155.5 million)

Date: September 28, 2018

At each of its previous September meetings, the Board has allocated the entirety of the ILS Aid to Localities appropriation for the fiscal year, thereby enabling the Office to (1) develop grants and distributions as authorized by the Board; (2) describe to providers, county and state officials the precise purposes for which the appropriated funds will be spent; and (3) fulfill its obligations to implement the terms of the *Hurrell-Harring* settlement and the Statewide Expansion of *Hurrell-Harring* reforms.

At the outset, it should be noted that our FY 2018-19 Aid to Localities appropriation consists of five distinct categories, as follows:

1. Statutory Distribution to NYC: \$40,000,000
2. Quality Enhancement Distributions: \$30,210,924
3. Competitive Grants: \$10,789,076
4. HH Implementation in 5 Counties: \$23,810,000
5. Statewide Expansion of HH Reforms: \$50,720,000

— incl. Dist. #9

Total Aid to Localities Appropriation = \$155,530,000.

In keeping with our annual practice and for the reasons stated above, I propose that the ILS FY 2018-19 Aid to Localities appropriation of \$155.5 million be allocated for the following purposes:

1. **Statutory Distribution (total: \$40,000,000).** The annual statutory distribution of \$40,000,000 to New York City, as mandated by State Finance Law § 98-b (3) (b). This statutory payment will be made to New York City in March of 2019.
2. **Quality Enhancement Distributions (total: \$30,210,924).** Quality enhancement distributions totaling \$30,210,924 under Executive Law §§ 832 (3) (f) and 833 (7) (c), under which all counties and New York City will be enabled to receive no less state funding (a total of \$70,210,924) than they received in 2010. Of the \$30,210,924 total, the funds would be distributed as follows:
 - **Distribution #7.** \$7,361,326 represents the third year of a three-year distribution ("Distribution #7"), which amount is identical to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2013 meeting (Distribution #4).

- **Distribution #8.** \$15,488,228 represents the second year of a three year distribution ("Distribution #8"), which represents the continuation of the amount allocated to upstate counties and New York City for the three year distribution authorized by the Board at its September, 2014 meeting ("Distribution #5").
- **Distribution #9.** \$7,361,326 represents the first year of a new three-year distribution ("Distribution #9"), which amount is identical to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2015 meeting ("Distribution #6").

3. Competitive Grants (total: \$10,789,076).

- **Regional Immigration Resource Centers (RIAC) (\$3,308,520).** Grants in the amount of \$3,308,520 to finance the first year of a three year program to continue or begin operations and increase funding of six Regional Immigration Assistance Centers in strategic locations within New York State (\$9,925,560 over three years). The Board has previously allocated three years of funding for the initial Regional Immigration Assistance Center grant (FY 2011-12; FY 2012-13; FY 2013-14) in an amount of \$2,789,076 per year (\$8,367,228 over three years).

- **Counsel at First Appearance (\$5,740,278).** Grants in the amount of \$5,740,278 that will finance the second year of a three-year program to provide counsel at a defendant's first court appearance in counties outside of New York City.

- **Assigned Counsel Infrastructure (\$870,139).** Grants in the amount of \$870,139 to finance the second year of a three-year program to develop grants to either establish or enhance assigned counsel programs.

- **Parental Representation Quality Improvement Grants (\$870,139).** Grants in the amount of \$870,139 that will finance the first year of a three year program to enhance the quality of parental representation within New York. The Board has previously allocated three years of funding for a Model Upstate Parental Representation grant (FY 2014-15; FY 2015-16; FY 2016-17) in an amount of \$870,139 (\$2,610,417 over three years).

4. Implementation of *Hurrell-Harring* (HH) Settlement Order (total: \$23,810,000)

- **Quality Improvement Funding (\$2,000,000).** \$2,000,000 represents the second year of a five year contract to extend implementation of the terms of the written plan

developed by ILS to improve the quality of indigent defense in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington).¹

- **Counsel at First Appearance (\$2,000,000).** \$2,000,000 represents the amount appropriated for funding the fourth year of a five year contract implementing the written plan developed by ILS to provide each eligible criminal defendant in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington) with counsel at his or her first appearance.

- **Counsel at First Appearance Grant Program (\$800,000).** \$800,000 represents the amount appropriated for the third year of a three year contract to ensure that the four Settlement Counties participating in ILS's first three year Counsel at First Appearance Grant program (Onondaga, Ontario, Schuyler and Suffolk) will continue to receive the same level of funding as was provided under that program.

- **Caseload Relief (\$19,010,000).** \$19,010,000 represents the amount appropriated for the second year of a three year contract to provide caseload relief for indigent legal service providers in the five *Hurrell-Harring* settlement counties. The \$19,010,000 figure was derived from the Caseload Standards determination submitted by ILS in December of 2016 for the five Settlement counties.

5. **Statewide Expansion of *Hurrell-Harring* (HH) Reforms (total: \$50,720,000)**

- **Implementation of December 1, 2017 plans (\$50,000,000).** \$50,000,000 represents the first year appropriation of the five year phase in to implement the plans submitted by the Office on December 1, 2017 to extend the *Hurrell-Harring* reforms statewide (counsel at arraignment, quality improvement and caseload relief). The appropriation authorizes the transfer of funds to state operations to establish regional resource support centers and hire data specialists.

- **Contract development (\$720,000).** \$720,000 represents the amount appropriated for contract development, administration and audit. These funds may be transferred to state operations or sub-allocated to other state agencies.



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Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board

From: Bill Leahy

Re: FY 2019-2020 Budget Request

Date: September 25, 2018

Joe and I are pleased to submit to you a budget request for FY 2019-2020 in the amount of \$215.4 million, consisting of \$208.5 million in Aid to Localities and \$6.9 million in State Operations. This request marks an increase of \$54.2 million over the current year appropriation of \$161.2 million.

Please see the specific components of this request in the attached **Office of Indigent Legal Services: FY 2019-20 Budget Proposal**. As indicated therein, with respect to State Operations, we seek to add four additional staff positions, fully annualize the costs of new positions filled during the current fiscal year, and create a long-term employee salary retention fund, to reward and retain the services of highly valued long-term staff. The new positions for which we are seeking funding are described in the attached **Additional FY 2019-20 ILS Staff Positions**.

Our request for Aid to Localities funding is in the amount of \$208.5 million, an increase of \$53 million. Fifty million dollars would finance the second year of the five-year statewide reform implementation pursuant to Executive Law § 832 (4), including the transfer of \$1.25 million to state operations, to fund our first Regional Support Center in the 8th Judicial District in western New York. The additional \$3 million we have requested would enable us to expand the menu and scope of a renewed grants program to elevate the quality of parental representation, particularly in upstate New York.

Our Aid to Localities request also includes continuation of current funding levels for grants and distributions to the counties (\$81 million), for HH settlement implementation in the five counties (\$23.8 million), and for expansion of those reforms statewide (\$50.7 million).

OFFICE OF INDIGENT LEGAL SERVICES: FY 2019-20 BUDGET PROPOSAL

	<u>Amount Requested</u>	<u>Increase over FY 2018-19</u>
<u>State Operations</u>		
FY 2018-19 Funding: \$5.7 million		
Office Staff & Retention	\$6.9 million*	\$1.2 million
Total State Operations	\$6.9 million	\$1.2 million
<u>Aid to Localities</u>		
FY 2018-19 Funding: \$155.5 million		
Current grant/distribution programs	\$81 million	\$0
Current HH programs	\$23.8 million	\$0
Statewide HH expansion	\$100.7 million**	\$50 million
Model Parental Representation	\$3 million	\$3 million
Total Aid to Localities	\$208.5 million	\$53 million
<u>Total ILS FY 2019-20 Request</u>	<u>\$215.4 million</u>	<u>\$54.2 million</u>

*Includes funding for (a) four new positions, consisting of: (1) an Assistant Grants Manager 1; (2) Grants Administrator 2; (3) Assistant Manager of Information Service; and (4) Director of Quality Representation - Assigned Counsel Plans (total salary for new positions are approximately \$300,000 plus fringe); (b) long-time employee retention salary increases (\$100,000) and (c) full annualization costs of new FY 2018-19 and FY 2019-20 positions.

**\$100.7 million would be the 2nd year of the 5 year phase-in of Statewide HH Expansion (\$50 million/yr.) (\$250 million over 5 years). The \$100.7 million would include funding to establish one Regional Support Center in FY 2019-20 (transfer of local aid funding to state ops)

FY 2019-20 ILS Staff Positions

Administrative Positions

- #1. Assistant Grants Manager 1 position (projected annual salary range: \$58,000 to \$68,000).
- #2 Grants Administrator 2 position (projected annual salary range: \$45,000 to \$55,000)

The FY 2018-19 Final Budget provided funding to add four administrative positions to our Grants Unit to better address the workload (and backlog) generated by our eight distributions, five competitive grants, Hurrell-Harring settlement and, in the current year, implementation of the Statewide Expansion of *Hurrell-Harring* reforms. In FY 2018-19, in order to accommodate the expected growth of the Grants Unit, the Unit was restructured and a new series of internal titles created (Assistant Grants Manager 2, Assistant Grants Manager 1, Grants Administrator 2, Grants Administrator 1, and Auditor). This restructuring allows us to further professionalize the Unit, introduce specialization of work duties within the Unit, and create the framework needed for adding additional staff during the five year phase-in of the Statewide Expansion of *Hurrell-Harring* reforms.

The four positions funded in FY 2018-19 represent the first step in growing the Grants Unit to the size needed to properly manage over 400 active reimbursement contracts (with another 150+ contracts in the process of being developed in the next year), manage the *Hurrell-Harring* structured payment contracts, and undertake the immense new responsibilities of the five-year Statewide Expansion of *Hurrell-Harring* reforms.

As step two in the expansion process, we request two administrative positions in the FY 2019-20 Budget, an Assistant Grants Manager 1 and a Grants Administrator 2. The addition of these two positions will not only increase the overall work capacity of the Grants Unit, but will allow the Grants Manager more flexibility to manage the Unit.

Information Services Position.

- #3. Assistant Manager of Information Services (projected annual salary range \$65,000 to \$75,000)

At present, the technology needs of the Office are handled solely by one person, the Manager of Information Services. While this arrangement worked in the early years of the Office when it was small, it is now longer feasible for one person, however talented, to handle all of responsibilities attendant to an expanding Office with many new, complicated technology needs. The duties of the Manager of Information Services are extensive, highly specialized and include the following:

- acting as Office liaison with ITS and other external agencies and vendors on IT-related matters;
- implementing technical plans for network enhancement;
- installing appropriate equipment in the Office;
- enhancing and upgrading systems to collect and report data; and

- enhancing information systems and managing and upgrading the Office's website and other internet communication.

These responsibilities are in addition to meeting the day-to-day technology needs of the entire Office and the constant need for arranging remote access meetings with indigent legal service providers and county officials.

The Assistant Manager of Information Services would not only assist the Manager of Information Services to ensure that the immediate technology needs of the Office are met but would also satisfy a longer term concern of the Office – providing the necessary training and development of expertise to ensure continuity in the delivery of technology services, in the event the Manager of Information Services is unable to do so.

Assigned Counsel Plan Attorney Position.

#4. Director of Quality Representation - Assigned Counsel Plans (projected salary range \$80,000 to \$99,000)

The FY 2018-19 Budget amended County Law § 722 (3) (b) and (c) to transfer authority to approve plans of bar associations to operate an assigned counsel program or office of conflict defender from the Chief Administrator of the Courts to the Office of Indigent Legal Services. Under the statute, approval of bar association plans to operate assigned counsel programs or conflict defender offices is required before counties are permitted to put these plans in operation. This transfer of authority takes effect April 1, 2019.

Obtaining the authority to approve bar association assigned counsel plans and conflict defender offices is the final piece needed for the development and upgrade of quality assigned counsel programs and conflict defender offices, along with creating standards for the administration of assigned counsel programs and continuing the funding made available through the *Hurrell-Harring* Settlement and Statewide Expansion of *Hurrell-Harring* reforms.

The Director of Quality Representation – Assigned Counsel Plans would work directly with counties, providers and bar associations to develop bar association plans that satisfy the ILS standards for the administration of assigned counsel program. The Director would also spearhead the effort to address the large backlog of bar association plans that have been submitted by counties to the Office of Court Administration in the past few years, but have not been acted upon in anticipation of this authority being transferred to the Office.



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To: Indigent Legal Services Board

From: Bill Leahy

Re: Creation of ILS Regional Support Center for the 8th Judicial District

Date: September 25, 2018

The Board has been on record since 2012 as supporting the establishment of ILS Regional Support Centers in every upstate Judicial District, because, as we argued in the December 1, 2017 submission of our Statewide Implementation Plan pursuant to Executive Law § 832 (4), they are "a necessity for improving the quality, the consistency, and the efficiency of legally mandated representation throughout New York." See **Regional Support Centers: An Essential Component of Statewide Reform**, attached.

In our Statewide Plan, we argued for the creation of nine RSCs – one in each upstate JD and one in New York City – over a three-year period. However, in subsequent discussions with Executive Branch staff, we agreed to defer this priority for a year, to focus our attention and resources on the goal of reaching agreement on contracts including first year funding with 52 counties and NYC.

During this period, we have also reviewed and amended the details of our vision for these Centers. We have analyzed how local needs have been altered by the HH Settlement and the passage of statewide reform, which has led us to recognize that the collection of accurate data is essential to the success of statewide reform. We have reconsidered whether the provision of local training (as opposed to its facilitation) should be a task of these Centers, when other entities are already so engaged. We have heeded providers' concerns that the Centers not duplicate quality improvements that local programs are making. Finally, we have made it clear that the encouragement and support of regional planning and cooperation is the primary responsibility of the RSC Attorney in Charge.

In the end, we have reduced staffing in the Centers from eight in our October, 2017 budget request to six in our current proposal. Finally, given the enormous continuing challenge of getting contracts executed and underway, we have decided to establish just one Regional Center this fiscal year, in far western New York in the 8th JD. In sum, the plan for RSCs has evolved to fit current conditions, to maximize the efficiency with which each Center will operate, and to prioritize the area of greatest immediate need.

The 8th Judicial District is our first RSC priority because of both need and opportunity. As to need, its public defense offices lie at the farthest remove from ILS headquarters in Albany (The Chautauque County Public Defense office is 352 miles west of the ILS office in Albany, the Cattaraugus County office 306 miles, the Erie County offices 288 miles and Niagara County 287). Its eight counties contain seventeen providers of mandated representation; 220 courts of which 193 (87.7%) are Town or Village Courts; and a population of 1.5 million spread over 8,100 square miles. Its institutional criminal defense providers suffer some of the highest average caseloads in the state; and all lacked sufficient data capacity to provide accurate data under the ILS Caseload Standards for inclusion in our December, 2017 Plan. Except in Erie County, its assigned counsel programs are either non-existent or in need of enhanced support and consideration of regional approaches. Outside of Buffalo and its suburbs, it is very rural.

As to opportunity, Erie County has long supported mature and efficient institutional and assigned counsel providers, the Legal Aid Bureau of Buffalo and the Assigned Counsel Program under the Erie County Bar Association. The city of Buffalo is centrally located within the Judicial District. Erie County public defense providers and government leaders understand the need for a Regional Center and support its establishment. Interest in regional initiatives is strong throughout the District, and there is a regional appellate program in place covering some but not all counties and providers. In short, the need and the opportunity are present.

"The right... to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

HIGHLIGHTS FROM THE DEVELOPMENT OF STATEWIDE EXPANSION OF THE HURRELL-HARRING REFORMS

Objectives for YR 1 of the Plan for Statewide Expansion

- Educate county officials and providers as to the settlement agreement, the 2017 legislation, the ILS plans and identified priorities, as well as the goals for compliance by April 2023.
- Gather statewide information necessary for plan implementation (i.e., on counsel at arraignment, assigned counsel panels and data collection capabilities).
- Work with counties and its mandated representation providers to develop plans to implement priorities identified by ILS and prepare each county and NYC for contract.

Initial Meetings & Follow Up Meetings

- Conduct initial meetings to introduce the ILS plans and to ensure support for plan preparation and implementation.
- Since February, ILS has conducted 82 in-person meetings with county officials and providers to introduce the ILS plans.

Information Gathering: Follow up Telephone Conferences on CAFA Coverage, ACPs & Data Collection

- Scheduling extensive follow up interviews via telephone conference to gather detailed information regarding the current state of CAFA coverage, the composition and functioning of assigned counsel programs and the current capabilities for data collection.
- Since February, the statewide expansion team has conducted 141 extensive follow-up interviews on, CAFA, ACP panels and case management/data collection capabilities.

Developing YR 1 of Plan Implementation

- Engaging in budget planning and negotiations to ensure that ILS priorities are addressed as to expanding CAFA coverage, developing and supporting institutional providers and structured assigned counsel programs, initiating caseload reduction and implementing resources to improve the overall quality of representation
- Since April, the statewide expansion team has engaged in 234 meetings to assist in developing budgets and prepare for plan implementation.

Highlights & Statewide Expansion Projects

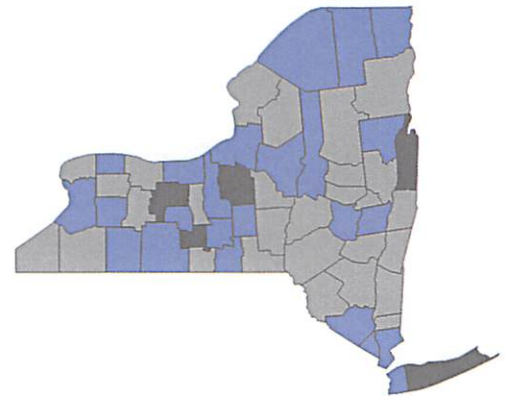
- Creating institutional provider offices and reconstructing existing offices to promote sustainable effective representation (i.e., creating public defender offices and expanding conflict representation).
- Developing structured assigned counsel programs and supporting resources. (12) *regional interest*
- Supporting the expansion of CAFA coverage (i.e., including counties developing centralized arraignment plans).
- Incorporating resources to improve the overall quality of representation, (i.e., training, experts, investigators, social workers, technology for improved client communication, etc.).
- Support statewide recruitment efforts, (i.e., the first NY State Public Defense Career Fair scheduled on October 19th in Buffalo, NY).
- Developing internal information management and support resources to manage statewide information gathering and data collection, (i.e., mapping resources, ILS website, ILS-195 form).

Indigent defense in NY: overview

Types of Providers of Indigent Defense*

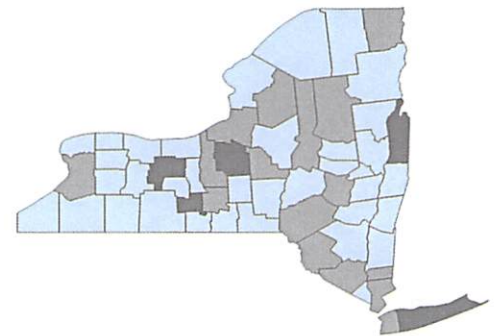
26 Assigned Counsel (with an Administrator):

Albany, Allegany, Cayuga, Clinton, Cortland, Erie, Franklin, Herkimer, Nassau, Oneida, Orange, Orleans, Oswego, Rockland, Schoharie, St. Lawrence, Steuben, Tioga, Tompkins, Warren, Wayne, Westchester, Wyoming, Yates and New York City (2).



28 Assigned Counsel (without an Administrator):

Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Columbia, Delaware, Dutchess, Essex, Fulton, Genesee, Greene, Hamilton, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Seneca, Sullivan, and Ulster.



36 Public Defender Offices

Albany, Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Columbia, Cortland, Dutchess, Essex, Franklin, Fulton, Genesee, Greene, Jefferson, Livingston, Monroe, Montgomery, Niagara, Oneida, Orleans, Otsego, Rensselaer, Rockland, Saratoga, Schenectady, Seneca, St. Lawrence, Steuben, Tioga, Ulster, Warren, Wayne, Wyoming and Yates.

14 Non-Profits

Erie, Madison, Nassau, Orange, Putnam, Sullivan (2), Westchester, and New York City (6).



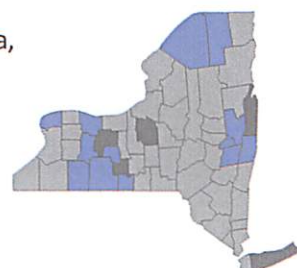
6 Private Attorneys

Columbia (3), Franklin, Lewis (2)



13 Conflict Defender Offices

Albany, Allegany, Chemung, Franklin, Livingston, Monroe, Niagara, Rensselaer, Saratoga, Schenectady, St. Lawrence, Steuben and Yates.



*Excludes the 5 Hurrell-Harring counties.



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September 11, 2018

Via E-mail

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Re: *Hurrell-Harring* Settlement Implementation

Dear *Hurrell-Harring* Parties:

As we have done previously, the New York State Office of Indigent Legal Services (ILS) is sending this letter with narratives about the progress of *Hurrell-Harring* Settlement implementation. These illustrations of on-the-ground progress are gleaned from our own observations as well as information reported to us from people who live in and are familiar with the local community. We share them with you as a means of effectively conveying the progress being made in improving the quality of public criminal defense.

The narratives in this letter highlight how use of the *Hurrell-Harring* Settlement's caseload relief funding has not just reduced caseloads, but has had other positive benefits. With reduced caseloads and a stronger staffing structure, providers have more time to, among other things: become involved in community initiatives that impact their clients; attend high-caliber trainings; network with other providers; and implement innovative programs designed to improve the quality of representation and facilitate better outcomes for clients. These are described below.

Caseload Relief Allows Public Defense Leaders More Time to Become Involved in Community Initiatives that Impact Clients.

During a recent meeting with ILS, Leanne Lapp, the Ontario County Public Defender, explained how implementation of ILS caseload standards has given her the time needed to work on community initiatives that impact the Public Defender Office's clients. As an example, she told us of a recent collaboration with other county officials and community-based organizations to work on a grant submission to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) for

funding to enhance the screening, case management, support, and post-recovery services that the County's diversion courts provide. This collaboration included the Ontario County District Attorney, Ontario County's grants manager, court staff, as well as community-based organizations such as Catholic Charities and Finger Lakes Area Counseling and Recovery Agency. Ms. Lapp played an active role in designing and writing the grant proposal. Recently, Ontario County learned that SAMHSA has awarded the county a total of \$1.89 million over five years, with \$367,023 available the first year for increased case management and peer support. An article about this award is available here: <https://fingerlakes1.com/2018/08/26/ontario-county-drug-court-gets-financial-boost-2/>

Ms. Lapp noted that prior to caseload standard implementation, she would not have been able to participate in this collaboration. She believes that there are long-term benefits to having the Public Defender Office at the table for this initiative in addition to the enhanced support services for Public Defender Office clients. For example, she could meet, and thus have "face time," with several key players in the community, which will help with future initiatives. She was also able to ensure that the voices of Public Defender Office clients and staff attorneys were heard in this initiative. She is optimistic that there will be additional opportunities like this in the future.

Similarly, the Onondaga County Assigned Counsel Program (Onondaga ACP) has been able to devote the time needed to participate in the Onondaga County Raise the Age Task Force, which has been meeting and collaborating to discuss implementation of the 2017 Raise the Age legislation, to go into effect October 1, 2018. At the ACP's urging, the County is planning on having young people charged with felony offenses and initially prosecuted in the criminal court's Youth Part represented by attorneys with the training and credentials needed to handle felony cases in criminal court and Juvenile Delinquency cases in Family Court. The goal is to ensure continuity of representation between criminal and Family Court such that every young person under the age of 18 arrested and prosecuted for a felony offense is represented by the same attorney, even if the case is ultimately transferred to Family Court. The ACP's participation has also prevented implementation of ill-advised practices, such as allowing young people charged with a felony offense to be interviewed by Probation without consultation with or access to defense counsel. As with Ontario County, Onondaga ACP's pre-Settlement staffing pattern would not have allowed the program to actively participate in this important Task Force; Settlement funding has allowed the program to significantly bolster its staffing pattern, making these types of collaborations possible.

Caseload Relief Allows for Enhanced Access to Regional, State-wide, and National Training Opportunities, Which Also Creates Opportunities for Defense Attorneys to Network with and Learn from Attorneys from Other Jurisdictions.

In Schuyler County, caseload relief funding has allowed the Schuyler County Public Defender Office to hire an additional full-time attorney. Prior to this, the Schuyler County Public Defender Office's staffing pattern of only two full-time and one part-time attorney (who works evenings) limited opportunities to attend trainings and Continuing Legal Education (CLE) programs outside the county because attendance at such programs would leave the Office without necessary coverage. With an additional attorney, the Schuyler Public Defender Office attorneys are now able to attend more out-of-county trainings. Since May 2018, when the new attorney began, Schuyler Public Defender Office attorneys have attended several out-of-county trainings, including the following:

- June 1, 2018 2nd Annual Master Class in DWI Defense: Drug Editions (co-sponsored by the New York State Defender Association and the Ontario PD Office and held in Ontario County). The new attorney, Valerie Gardner, attended.

- June 22, 2018 Fighting for Fair Bail CLE program (sponsored by the Regional Schuyler/Tompkins County ACP and held in Ithaca, NY). Public Defender Wes Roe and staff attorney Mark Raniewicz attended.
- July 23-24, 2018 New York State Defender Association (NYSDA) Annual Meeting and Conference, held in Saratoga Springs, NY. Wes Roe and Mark Raniewicz attended.

Notably, attending these regional and state-wide programs has allowed the Schuyler Public Defender Office attorneys to network and consult with attorneys from other counties, often in ways that directly benefit clients. For example, at the NYSDA Annual Conference in July 2018, Wes Roe connected with Nancy Ginsburg, Director of The Legal Aid Society's Adolescent Intervention and Diversion Project, and discussed his 16-year-old client who is charged with an arson offense. She agreed to provide the Schuyler Public Defender Office with expert and technical assistance on the case.

Leanne Lapp, the Ontario County Public Defender, notes similar advantages to caseload standard implementation. During a meeting with ILS, Ms. Lapp reported that having manageable caseloads means that Ontario Public Defender Office attorneys have the time needed to attend high-caliber skills-based trainings. This was most evident in June 2018, when Ms. Lapp sent two staff attorneys to the National Criminal Defense College in Macon, GA (commonly known as "Macon"). The premier hands-on trial trainer designed just for criminal defense lawyers, Macon is a challenging and intense two-week program. Both attorneys returned from the program excited about what they had learned and eager to put their new skills into practice. Having two attorneys attend this program would not have been possible prior to caseload standard implementation, because attorney workloads would have made it impossible to spare two attorneys for two weeks.

This is not the only training opportunity Ontario Public Defender Office staff attorneys recently have benefited from as a result of caseload relief funding. Attorneys were also able to attend the Fighting for Fair Bail CLE in Tompkins County on June 22, 2018; the training on suppression issues sponsored by the New York State Association of Criminal Defense Attorneys in New York City; and the New York State Defenders Association Annual two-day conference and CLE.

As with the Schuyler Public Defender Office, Ms. Lapp notes that these trainings are not just opportunities for knowledge and skill development for attorneys, but also opportunities to network with attorneys from other jurisdictions and to build important connections that promote the delivery of quality representation. For example, a few years ago, she sent a staff attorney to a DWI skills training sponsored by the National College for DUI Defense (NCDD). He returned very excited about the program, and stated that NCDD would be interested in delivering the program in New York. Because of this connection, the Ontario Public Defender Office has co-sponsored (with the NCDD and the New York State Defenders Association) two day-long CLE programs on DWI defense, the second of which was delivered on June 1, 2018. Both programs attracted just over 100 attorneys, including, as noted above, Ms. Gardner, Schuyler County Public Defender Office's new staff attorney.

Caseload Relief Allows for Implementation of Innovative Programs that Enhance the Quality of Representation and Produce Better Outcomes for Clients.

Caseload relief funding has also been used to implement creative initiatives. In a previous Settlement highlight letter, for example, we described how the Suffolk County Legal Aid Society has used caseload relief funding to not just hire new attorneys, but to ensure that these attorneys are acculturated to delivering holistic defense services. In a similar effort to encourage attorneys to view the representation they provide clients from a holistic perspective and to have assistance in identifying and ameliorating

the life-long consequences (often referred to as “collateral consequences”) of a criminal conviction, the Onondaga ACP is using caseload relief funding to establish a “Re-Entry Program” in collaboration with the Legal Services of Central New York (LSCNY). This Re-Entry Program provides direct services to ACP current and former clients who need legal assistance in overcoming the barriers to housing, employment, and education erected by their conviction; and provides ACP attorneys with expert advice on the collateral consequences of a conviction and strategies for ameliorating or avoiding altogether these consequences. The direct client service component of the project also utilizes LSCNY’s expertise in collateral consequences so they can serve as a resource for ACP attorneys who seek “advisory letters” on client-specific collateral consequences in their cases. Such advisory letters can be effective in plea and sentencing advocacy.

This project was announced to panel attorneys during an August 15, 2018 panel attorney quarterly meeting, and the ACP has promoted this program in subsequent ACP Defender newsletters. By August 18, 2018, a few days after the program was first announced, ACP panel attorneys had already reached out to LSCNY for their expert assistance. One case involved a client charged with Endangering the Welfare of a Child who was attending classes with the hopes of working in long term care. The attorney sought advice on the benefits of an adjournment in contemplation of dismissal with the condition that the client participate in parenting classes versus a plea to disorderly conduct with a conditional discharge as a sentence (the condition being participation in parenting classes). The other attorney contacted LSCNY about three pending cases, one in which the client was charged with welfare fraud and the other involving sex offense charges. LSCNY staff responded to the first attorney right away, and arranged a meeting with the second attorney for a more comprehensive assessment of the facts of the cases and the personal circumstances of the clients.

In its 2006 seminal report, *The Final Report to the Chief Judge of the State of New York*, the Commission on the Future of Indigent Defense Services (commonly known as the Kaye Commission), described New York’s public criminal defense system as “a haphazard, patchwork composite of multiple plans... [resulting in] a fractured, inefficient and broken system.”¹ As described in the Kaye Commission’s report, public defense providers often worked on their crushing caseloads in isolation, lacking the time and resources needed to, among other things, collaborate with other criminal defense providers. Public defense providers also lacked the time to network with other community stakeholders, and often were not included in community initiatives that impact their clients. In many communities, public defense providers felt isolated and invisible.

With reasonable caseloads, the *Hurrell-Harring* providers have time to network and to participate in community initiatives. Ideally, this will allow them to establish themselves as important community stakeholders to be included in initiatives that impact low-income people at risk for, or with a history of, being arrested. Additionally, defense attorneys now have time and opportunities to meet defenders from other jurisdictions and to brainstorm on common issues they face. Doing so will enable defense providers to feel less isolated, ultimately promoting a less fractured system in which providers across the State can collaborate more often and more effectively on individual cases and on addressing systemic barriers to justice for low-income people.

¹ The Commission on the Future of Indigent Defense Services, *The Final Report to the Chief Judge of the State of New York*, at 15 (quoting the Spangenberg Report).

We look forward to discussing with you these and other indications of *Hurrell-Harring* Settlement implementation during our September 12, 2018 phone conference.

Sincerely,

Bill Leahy
Joe Wierschem
Patricia Warth

**New York State
Raise the Age Implementation Task Force
Meeting Agenda**

September 26, 2018

- **Welcome and Introductions (Sheila Poole and Mark White)**
- **State Level Implementation Readiness Updates**
 - **Division of Criminal Justice Services (Mark White)**
 - **Office of Children and Family Services (Sheila Poole)**
 - **Office of General Services (RoAnn Destito)**
 - **State Commission of Correction (Brian Callahan)**
 - **Department of Corrections and Community Supervision (Anthony Annucci)**
 - **Office of Court Administration (Judges Edwina Mendelson and Michael Coccoma)**
- **Update on Local Fiscal Planning Instruments and Comprehensive Fiscal Plans (Todd Scheuermann)**
- **Current Data Trends and Presentation on Proposed RTA Post Implementation Data Collection (Terry Salo, DCJS and Rebecca Colman, OCFS)**
- **State Agency Plans to Provide Oversight of RTA Implementation (State Agencies)**
- **Review of Sealing Provisions (Terry Salo)**
- **Phase One Implementation Report due August 2019 (Sheila)**
- **RTA Task Force 2019 Proposed Schedule of Meetings (Sheila)**
 - **Next date is Monday, January 28th from 1 – 2:30 pm**

Open Discussion/Conclusion



Andrew M. Cuomo
Governor

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Improving the Quality of Mandated Representation Throughout the State of New York

Criminal Defense Advisory Group (CDAG)

Tuesday, September 25, 2018

Before conveying the agenda for this meeting, we want to thank you for the substantive discussion and advice you provided at our initial meeting on June 28. As a result of that meeting, we have rethought and made changes to our Regional Support Center proposal; we have embraced and cooperated with the planning for the New York State Public Defenders Job Fair on October 19, and we are trying to be as clear and explicit as we can be in our coming communications about data collection under statewide reform. In short, the first meeting of this Advisory Group demonstrated the tremendous value of having one.

At next week's meeting, we'd like to share our thoughts and hear yours about two issues that we describe briefly below. In each discussion, we would ask you to include in your thinking and speaking an identical question: "How can ILS help?"

AGENDA

- | | |
|----------------------|--|
| 11:00 – 11:15 | Welcome, Introductory Remarks, Progress since last meeting |
| 11:15 – 12:45 | <i>Hopes for Reform, and Barriers against it:</i> an open discussion about what we hope reform will achieve, the barriers to reform, and what each of us can do to fulfill the promise of public defense reform in New York. |
| 12:45 – 1:30 | Lunch and conversation |
| 1:30 – 2:50 | <i>Creating or Strengthening Assigned Counsel Programs:</i> no client left behind. |
| 2:50 – 3:00 | Wrap up and consideration of next meeting date |