



New York State Office of
Indigent Legal Services

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INDIGENT LEGAL SERVICES BOARD MEETING

December 2, 2022
New York City Bar Association
42 West 44th Street, New York, NY

This meeting will occur in-person.

Members of the public who wish to observe the meeting can observe in person or remotely via this link: <https://meetny.webex.com/meet/peter.avery> (hit: Ctrl + Click to follow link or copy and paste it into your web browser).

AGENDA

- I. Approval of Minutes of September 23, 2022 Board Meeting (**vote**) (attachment)
- II. Honoring retired ILS Board members, former Chief Judge Janet DiFiore and Joe Mareane (attachments) (Acting Chief Judge Cannataro and Patricia Warth)
- III. Two brief updates: (Patricia Warth)
 - a. *Hurrell-Harring* Settlement compliance
 - b. Second Upstate Family Defense Quality Improvement & Caseload Reduction Grant
- IV. Overview of Statewide Quality Improvement and Caseload Relief Update Report (attachment) (Karlijn Kuijpers & Patricia Warth)
- V. ILS Office Updates (Burton Phillips)
 - New ILS Office staff
 - Vacant ILS Office positions
 - WNY Regional Support Center
- VI. Adjourn

ILS Board Meeting schedule for 2023:
April 14, 2023
June 2, 2023
September 22, 2023
December 8, 2023

All meetings are at 11:00 am and take place at the New York City Bar Association.

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

I. September 23, 2022 Board
Meeting Minutes

Minutes for the Indigent Legal Services Board Meeting

September 23, 2022

11 A.M.

In person at the New York City Bar Association and virtual meeting on WebEx

Board Members Present: Acting Chief Judge Anthony Cannataro, Judge Carmen Ciparick, Diane Atkins, Lenny Noisette (virtual), Suzette Melendez (virtual), Vince Doyle (virtual)

ILS Office presenters: Patricia Warth, Burton Phillips (virtual), Matt Alpern, Lucy McCarthy

Minutes taken by: Mindy Jeng

I. Approval of Minutes of June 3, 2022 Board Meeting (vote) (attachment)

Judge Ciparick moved to approve the minutes, and the motion was seconded by Mr. Doyle. A vote was taken, and the minutes were approved unanimously.

II. ILS Budget Request for State Fiscal Year 2023-24 (vote) (attachment) (Patricia Warth & Burton Phillips)

ILS Director Patricia Warth summarized the ILS proposed budget request for the upcoming State Fiscal Year 2023-24. She started with ILS' State Operations proposed budget request, which is \$7.72 million, an increase from the current fiscal year's State Operations budget of \$6.96 million. The increase is attributable to fully annualizing the costs of current staff salary and fringe as well as the creation of three new staff positions. Director Warth briefly described the three sought positions and the explained the rationale for the requests:

- A Human Resources (HR) manager, this position would allow ILS to better coordinate with other state agencies and provide the office with much-needed in-house expertise. ILS' HR functions are currently hosted by the Office of General Services.
- An Auditor for the Grants Unit, this person would supplement the work of ILS' current Auditor, and help streamline the audit review process to make sure that the funding is flowing in a fiscally responsible way.
- An Appellate Attorney for Parental Representation. This person would report to Cindy Feathers, in consultation with Lucy McCarthy. The need for this position reflects the interplay between Family Court trial level representation and appellate representation. This position would also liaise with the Statewide Appellate Support Center.

Last year, ILS' State Operations budget request was fully funded.

Acting Chief Judge Cannataro asked whether the Human Resources position would work on Diversity, Equity, and Inclusion issues. Director Warth answered that the new position would liaise directly and work hand-in-hand with Luchele Chisunka on DEI efforts.

Ms. Atkins asked whether ILS employees are civil service employees. Director Warth answered that under Executive Law Sec. 832, the ILS Director has discretion to hire upon consultation with the Board. ILS asks for its positions to be civil service exempt, and ILS employees generally fit very well as management/confidential employees because the necessary job qualifications do not necessarily lend themselves to a civil service exam.

Judge Ciparick asked if clerical staff are also exempt from civil service requirements. Director Warth answered yes.

Ms. Melendez asked if ILS is envisioning any additional new staff positions beyond the ones included in this year's budget request. Director Warth answered that there is a desire to hire more staff for the Parental Representation unit along with the desire for additional state Aid to Localities funding to improve the quality of parental representation. She also noted that the Grants Unit is not yet fully staffed, and that she desired get the Grants Unit fully staffed before undertaking an assessment of ILS' needs.

Director Warth then summarized ILS' Aid to Localities budget request. The current ILS Aid to Localities budget includes \$81 million for grants and distributions; \$23.8 million for the *Hurrell-Harring* settlement; \$250 million for statewide extension of the *Hurrell-Harring* settlement, and \$4.5 million for improved quality parental representation grants. The ILS Aid to Localities budget request for State Fiscal Year 2023-24 seeks an increase of \$23.5 million over the current fiscal year. The entire increase for \$23.5 million is for improved parental representation. Director Warth explained the rationale for the amount requested and described the need for dedicated State funding for parental representation.

The current level of State funding available for improved quality representation only allows ILS to distribute funding through a competitive process. ILS issued an RFP in August for counties to receive grants for improved quality parental representation, but there is only funding available to issue around 16 awards, and 23 counties applied. The funding ILS is requesting would not fully address the crisis in parental representation but would help ILS get closer to meeting the need.

Judge Ciparick asked what ILS would do if the Legislature only approved half of what ILS is requesting for parental representation. Director Warth answered that the ILS Board would be part of the decision, but that ILS would explore whether it is enough to disburse to all counties without a competitive process, and if not, then disbursing it to all counties through a competitive process might be necessary.

Acting Chief Judge Cannataro asked if counties had the necessary infrastructure in place to handle increased funding from ILS. Director Warth responded that counties are already

required under State law to provide mandated representation, and that this funding will allow them to bolster that infrastructure. She then explained some of the possible uses of the funding.

Judge Ciparick asked whether the funding could be used by Assigned Counsel Programs. Director Warth said that it could and noted that one of the previous awardees of parental representation funding is Erie County, for use by its ACP.

Judge Cipatrick made a motion to approve the budget request, and it was seconded by Ms. Atkins. The budget request was unanimously approved.

III. Update on *Hurrell-Harring* Statewide Implementation (attachment) (Matt Alpern)

Matt Alpern, ILS' Interim Chief Statewide Implementation Attorney & Director of Quality Enhancement for Criminal Defense Trials, provided the Board with an update on the progress made to date on statewide implementation of the *Hurrell-Harring* settlement reforms, pursuant to Executive Law § 832(4). ILS had recently completed a Performance Measures Progress Report, which was attached to the Board meeting agenda, to demonstrate what statewide implementation looks like to date.

Mr. Alpern discussed the successes and challenges of statewide implementation, and described the collaborative process that ILS engages in with providers of mandated legal representation and county governments in furtherance of successful implementation. He also spoke about ILS' focus on ensuring that providers have sufficient funding for staffing to be in compliance with ILS' caseload standards, but also the work that ILS does to fund non-attorney resources that are so critical to delivering quality representation.

He also described the work that ILS is doing to improve the quality of mandated criminal defense being provided by assigned counsel programs (ACPs), including providing funding for full-time ACP administrators, experts and other non-attorney professional services, second chair and mentoring programs, and appellate consultations.

Mr. Alpern identified recruitment and retention of attorneys as one of the biggest challenges that providers are currently facing across the state but particularly in rural areas. ILS has been working with providers and other stakeholders to develop strategies to overcome these challenges. He also discussed other initiatives that he described as being "layered on top of everything else that ILS does," including the Gideon's Promise public defense leadership training program and ACP summits.

Ms. Atkins asked if there are caseloads standards for attorneys providing mandated representation for parents in Family Court. Mr. Alpern responded that the statewide implementation funding is only for criminal cases. Director Warth noted that the ILS Board previously approved caseload standards for parental representation, but the approval was contingent upon state funding, which has not yet been forthcoming.

Acting Chief Judge Cannataro asked who or what entity provides services like mentoring, second-chairing, or appellate consultation for assigned counsel programs. Mr. Alpern responded that the ACP administration usually oversees the programs. Some of the larger ACPs may have dedicated staff such as a training director or forensic director who will implement the programs; other ACPs identify private attorneys who have the qualifications to help implement these programs. Director Warth identified the ACP in Onondaga County as being successful in having some people on staff to provide some services and identifying qualified private attorneys to deliver other services.

IV. Introduction to Lucy McCarthy, new ILS Director of Quality Enhancement, Parental Representation (Lucy McCarthy)

Lucy McCarthy, the new ILS Director of Quality Enhancement, Parental Representation, introduced herself to the Board after a brief introduction by Director Warth. Ms. McCarthy was hired from within ILS to fill the vacancy left by the departure of Angela Burton.

Ms. McCarthy described Ms. Burton's impact on ILS and her accomplishments as Director of Quality Enhancement, Parental Representation, including cultivation of relationships with providers, the development of practice standards for child welfare cases, the development of caseload standards, and the development of eligibility standards for parental representation. Ms. McCarthy said she was honored to continue the work that Ms. Burton started.

She also identified her long-term goal of elevating the work of parental representation, with the ultimate goal of helping keep families intact.

It was noted that ILS has posted for Ms. McCarthy's former position of Assistant Counsel for Parental Representation.

Ms. Melendez stated that she had great confidence in Ms. McCarthy's ability to move forward, and that she is looking forward to seeing all the new developments. Ms. McCarthy responded that it was exciting to have an ILS budget request seeking a substantial increase in Aid to Localities funding for parental representation.

Ms. Melendez asked about the possibility of legislation that was being prepared by the OCA's Commission on Parental Representation. Ms. McCarthy acknowledged that the Commission is preparing legislation and had met the previous day but had not yet made any final decisions about the draft legislation.

Mr. Noisette asked for an update on Title IV-E funding. Ms. McCarthy answered that Title IV-E funding is coming in. Director Warth elaborated that ILS is working with counties to approve their plans to use Title IV-E funding improve the quality of parental representation. She also noted that the New York State Office of Children & Family Services is handling the claiming and disbursement of the funding.

Ms. Melendez thanked Judge Peters for her work on the Commission and asked whether there were any thoughts on when the Commission's legislation might be available. Patricia said that it is her understanding that the Commission on Parental Representation is continuing to work on the legislation with the goal of having something ready for the coming legislative session.

V. *Hurrell-Harring* Settlement Compliance Update (Patricia Warth)

Director Warth provided the Board with an update on a compliance issue with the *Hurrell-Harring* settlement that ILS is monitoring.

She explained that the settlement provided that New York State shall provide funding to the five defendant counties to improve the quality of mandated criminal representation, including funding for counsel at arraignment, caseload relief, and initiatives to improve the quality of public defense. Director Warth noted that, since 2016, ILS has consistently noted in its settlement-required *Hurrell-Harring* settlement reports that the failure of New York State to increase the assigned counsel rates was a looming crisis for settlement implementation. On April 29, as part of its regular reporting requirements, ILS again flagged for the *Hurrell-Harring* parties that a crisis was imminent. On May 16, ILS sent a letter to the *Hurrell-Harring* parties identifying Onondaga and Schuyler Counties as being out of compliance with the settlement, because of the failure to raise the assigned counsel statutory rates and despite the good faith efforts of the two counties to fully implement the settlement. The plaintiffs then issued a non-compliance notice to the State, triggering a negotiation period under the terms of the settlement.

Consistent with the terms of the settlement, ILS was invited to participate in some of the negotiations and asked to provide information to the parties. Director Warth noted that to date there is no final negotiated solution, and that the plaintiffs had since filed an escalation notice that allows them to seek a judicial resolution. However, ILS' understanding is that the negotiations are continuing.

Judge Ciparick asked whether a resolution to the issue would involve legislation. Director Warth responded that it was not clear whether that would be the case and noted that there could be a judicial order but that the timing of a resolution was unclear at this point.

Acting Chief Judge Cannataro asked about ILS' effort to reach out to judges and magistrates. Director Warth explained that as part of our efforts to obtain information from a variety of perspectives about settlement implementation, earlier in the year, ILS had conducted a survey of judges and magistrates to elicit their thoughts and experiences with settlement implementation. The survey questions did not focus on the assigned counsel rates, but even though they did not actively elicit information about assigned counsel rates, the judges volunteered that there needed to be an increase in assigned counsel rates.

VI. ILS Office Updates (Burton Phillips)

Burton Phillips, ILS Counsel, provided the Board with an update on hiring ILS staff, including backfilling vacant positions and hiring for newly-created positions:

- Allison Clifford recently started as HH Implementation Attorney for Quality Enhancement. She most recently served as the Principal Law Clerk to Albany County Court Judge William Carter, served as Court Attorney in Albany City Court, and has wide-ranging experience including private practice, appellate work, and Family Law.
- Madeline Rasmussen recently started as Statewide Implementation Attorney for Caseload Standards. She comes to ILS with experience providing direct representation in criminal defenses cases at both the Warren County Public Defender's Office and the Nassau County Legal Aid Society.
- Liah Darlington started the prior week as Administrative Assistant. Liah comes to ILS from the Cornell Cooperative Extension of Albany County and has professional experience in a number of legal offices.

Mr. Phillips also noted that two new hires were imminently joining ILS in the new Statewide Appellate Support Center:

- Mandy Jaramillo was hired as Senior Appellate Attorney and will be starting with ILS next week. Mandy comes to ILS from the Office of the Appellate Defender in New York City, where she most recently served as Supervising Attorney and Director of Reinvestigation. She's also worked for the Innocence Project and the Center for Family Representation
- Kelly Egan was hired as Appellate Attorney and will be starting with ILS in October. Kelly has worked at the Rural Law Center of New York for almost eight years, most recently serving as Appeals Director. She's also served on both criminal and family law assigned appellate panels in the Third Judicial Department.

Mr. Phillips also noted that ILS was currently in the process of interviewing candidates for several other Statewide Appellate Support Center positions, including two additional mid-level Appellate Attorneys, a junior Appellate Attorney, and a paralegal. He also announced that ILS was currently posting for an Assistant Counsel for Parental Representation, to backfill Ms. McCarthy's former position, and would soon be posting for a number of other positions:

- Filling or backfilling four Grants Unit positions
- Family Court Senior Research Associate
- Family Court Program Associate
- Statewide Appellate Support Center Investigator
- Statewide Appellate Support Center Case Manager

Several newly-funded ILS staff positions must still go through the State's Civil Service classification process, including:

- Assistant Manager of Information Services
- Six positions to fully staff ILS' new Western New York Regional Support Center

Mr. Phillips also notified the Board that ILS is making progress toward executing a 10-year lease for office space in downtown Buffalo for the Western New York Regional Support Center and have a preliminary move-in date of March or April 2023.

VII. Adjourn

Acting Chief Judge Cannataro moved to adjourn the meeting until the December 2, 2022 meeting. The motion was seconded and the meeting ended at 12:19 p.m.

II. Resolutions Honoring Former Chief Judge Janet DiFiore and Joe Mareane



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RESOLUTION

WHEREAS, the New York State Office of Indigent Legal Services (ILS) is committed to its statutory mission “to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-b of the county law;” and

WHEREAS, consistent with Executive Law Sections 832 and 833, ILS reports to and works closely with the Indigent Legal Services Board to execute its statutory mission; and

WHEREAS, Chief Judge of the New York Court of Appeals Janet DiFiore has served as Chair of the Indigent Legal Services Board since her confirmation as Chief Judge in 2016, during which time she never equivocated in her support of ILS and its mission; and

WHEREAS, Chief Judge DiFiore was a strong and effective leader of the ILS Board, actively eliciting key information and diverse opinions to facilitate Board deliberations and decision-making on behalf of ILS; and

WHEREAS, throughout her tenure as Chair, she led ILS through legislative enactment of statewide public criminal defense reform, significantly increased funding to enable fulfillment of that reform, and the selection of ILS’ second Director; and

WHEREAS, as ILS Board Chair, Chief Judge DiFiore ably led ILS through the unprecedented Covid-19 health crisis, working closely and effectively with ILS leadership on taking steps to ensure the well-being and safety of ILS staff and ensuring that ILS could continue its vitally important work in improving the quality of public defense; and

WHEREAS, she was deeply committed to improving the quality of *all* mandated representation and because parental representation in Family Court had not been included in the statewide public criminal defense reforms, she took steps to remedy this by creating the Commission on Parental Legal Representation; and

WHEREAS, Chief Judge DiFiore has consistently provided ILS leadership with sound advice and rock-solid protection from political interference, providing superb leadership for a too often neglected public responsibility; and

WHEREAS, it is only right and proper that the leadership and staff of ILS commemorate and honor extraordinary service by members of the Indigent Legal Services Board;

NOW, THEREFORE, BE IT RESOLVED that ILS formally recognizes upon the occasion of her retirement from the New York Court of Appeals that in Chief Judge Janet DiFiore, we had a Board Chair worthy of our highest esteem and appreciation.

Dated: December 2, 2022

Patricia J. Warth
Director
New York State Office of Indigent Legal Services



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RESOLUTION

WHEREAS, the New York State Office of Indigent Legal Services (ILS) is committed to its statutory mission “to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-b of the county law;” and

WHEREAS, consistent with Executive Law Sections 832 and 833, ILS reports to and works closely with the Indigent Legal Services Board to execute its statutory mission; and

WHEREAS, Joseph (“Joe”) Mareane has served as a member of the Indigent Legal Services Board since its creation in 2010, and was in attendance at the Board’s first meeting in November 2010; and

WHEREAS, as a Board member, Mr. Mareane was a key voice in the decision to nominate Bill Leahy as the first Director of ILS, demonstrating the Board’s commitment to pursuing the statutory mission of ILS by selecting as ILS’ first Director a lifelong public defender and fearless advocate deeply committed to quality representation; and

WHEREAS, the great strength of the Board is its incorporation of diverse experiences and perspectives, with each member dedicated to the goal of ensuring quality representation for all eligible people, and Mr. Mareane consistently contributed vital local insights into Board deliberations and decisions; and

WHEREAS, Mr. Mareane was instrumental in facilitating the implementation of the Tompkins-Schuyler Regional Assigned Counsel Program, which serves as a model for regionalization efforts across New York State; and

WHEREAS, as a Board member for over 11 years, Mr. Mareane has served during a time of incredible growth for ILS; over his tenure on the Board, he has helped shepherd ILS from an agency with no staff and a responsibility for disbursing \$79 million a year, to an agency with over 30 staff and growing and the responsibility for disbursing over \$400 million annually to the counties; and

WHEREAS, Mr. Mareane has been an unfailing source of wise advice and consistent support to two generations of ILS leadership; and

WHEREAS, it is only right and proper that the leadership and staff of ILS commemorate and honor extraordinary service by members of the Indigent Legal Services Board;

NOW, THEREFORE, BE IT RESOLVED that ILS formally recognizes upon the occasion of his resignation from the Indigent Legal Services Board that in Joe Mareane, we had a Board member worthy of our highest esteem and appreciation.

Dated: December 2, 2022

Patricia J. Warth
Director
New York State Office of Indigent Legal Services

III. Statewide Quality Improvement & Caseload Relief Update Report

Statewide Plan for Implementing Quality Improvement and Caseload Relief:

Year Four Report

October 31, 2022



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Introduction

The New York State Office of Indigent Legal Services (ILS), pursuant to Executive Law § 832(4), submits this status update report addressing ongoing implementation of ILS' December 1, 2017 Statewide Plan for Quality Improvement (Quality Improvement report) and the Plan for Implementation of Caseload Standards in New York State (Caseload report).

This report marks the first time that ILS has simultaneously submitted its Quality Improvement and Caseload reports to track statewide implementation of the *Hurrell-Harring* settlement initiatives (Statewide implementation). The ability of providers of mandated legal representation in criminal cases to fulfill the quality improvement requirements of Executive Law § 832(4)(c) is inextricably intertwined with the implementation of caseload relief reform pursuant to Executive Law § 832(4)(b). The two reports are appropriately joined since the primary goal of caseload relief is to improve the overall quality of representation provided to public defense clients and because quality improvement reforms are necessary for programs to actualize the reduction of workload benefit derived from implementation of caseload relief.

The Quality Improvement section of this report is qualitative in nature and focuses on the progress made in building the infrastructure for improved quality mandated legal representation in criminal cases. The Caseload section of this report is more quantitative and focuses on the data mandated criminal defense providers reported to ILS regarding caseloads, expenditures, and staffing. It also looks at two measures to gauge the progress of Statewide implementation: average weighted cases per attorney (for institutional providers), and average spending per weighted case (for Assigned Counsel Programs).

Together, the Quality Improvement and Caseload sections of this report give rise to the following themes:

- Despite the challenges posed by the Covid-19 pandemic and the nature of the five-year build-up in Statewide funding (i.e., only one-fifth of the total annual funding appropriated in Year One, two-fifths in Year Two, etc.), significant progress has been made in building the quality improvement structures needed to successfully extend the *Hurrell-Harring* settlement reforms statewide. The data in the Caseload section of this report, and the measures ILS uses to track Statewide implementation progress, show that building these quality improvement infrastructures is yielding positive results.
- The stark differences between criminal and Family Court providers in average weighted case per attorney (for institutional providers) and average spending per weighted case (for Assigned Counsel Programs) is proof of what is being accomplished with an infusion of State funding to improve the quality of mandated criminal defense representation. It is also evidence of the need for additional State funding for mandated representation of parents in Family Court matters.
- Fair and competitive defense attorney compensation is critical to the ongoing progress of Statewide implementation, necessitating an examination of the barriers to equitable

salaries for defenders who work for institutional providers and an increase in the statutory hourly rates for assigned counsel attorneys.

There are, of course, ongoing challenges to Statewide implementation and the commensurate need for an ongoing commitment to the funding and work needed to continue the progress that has been made to date. Perhaps the most significant challenge that emerged over the past year, and one that is directly tied to attorney compensation, is that of attorney attrition and recruitment—a problem New York mandated providers are experiencing and one that mirrors what is currently happening across the nation. ILS will continue to work with the counties and New York City on meeting this and other challenges.

I. Building the Architecture for Quality Improvement Reform: Ongoing Structural Initiatives in Institutional Provider Offices and Assigned Counsel Programs

Executive Law § 832(4)(c) requires ILS to ensure that attorneys providing constitutionally mandated, publicly funded representation in criminal cases for people who are unable to afford counsel: (A) receive effective supervision and training; (B) have access to and appropriately utilize investigators, interpreters and other experts on behalf of clients; (C) communicate effectively with their clients; (D) have the necessary qualifications and experience; and (E) in the case of assigned counsel attorneys, are assigned to cases in accordance with County Law Article 18-B and in a manner that accounts for the attorney's level of experience and caseload.

The Caseload section of this report necessarily maintains a data driven numerical focus to explain and highlight ILS' progress in its efforts to increase staffing and resources in institutional provider offices and quality time and resources spent on cases in Assigned Counsel Programs (ACPs). Similarly, ILS' Performance Measures Annual Reports track provider spending in several areas to monitor the progress of implementation. But this quantitative information, while an extremely important indicator of progress, does not fully capture the totality of success that has been achieved to date. From the very beginning of the Statewide implementation process, ILS has understood that its reform efforts also depend upon its ability to build strong and durable structural foundations that will enable these reforms to succeed over time. This ongoing effort to build a lasting architecture for reform is not as susceptible to quantitative measurement, but it is an equally vital component of reform.

Success in this critical area can remain obscured within other aspects of reform that have been the focus of previous Quality Improvement status reports. Consequently, the Quality Improvement section of this combined report will focus on the infrastructure that ILS is helping to build around New York State. Simply put, successful implementation of caseload relief reform also requires a significant investment in the quality improvement arena of infrastructure development for both institutional provider offices and ACPs. Specific areas that this report will highlight to demonstrate this include: (A) Office Space Initiatives; (B) Assigned Counsel Program Structures; (C) Creation of New Institutional Provider Programs; (D) Technology Related to Pretrial Discovery Reform; (E) Case Management Systems and Data Infrastructure Development; and (F) Recruitment and Retention Challenges.

A. Quality Improvement Initiatives Involving Increased Office Space are an Essential Component of Caseload Relief

(1) Institutional Providers

For institutional providers, the reduction of unmanageable caseloads and compliance with ILS caseload standards necessarily requires a significant increase in staff, which in turn often requires a significant increase in office space. As the Performance Measure data reveal, between April 2018 and March 2022, 565 full-time equivalent (FTE) attorney positions were created and filled as a result of Statewide funding. Of these, 340 are newly-created positions, 46 result from increasing the hours of existing positions, and 178 are hired via a contract. During the same time period, 341 FTE non-attorney positions were created and filled with Statewide funding. Of these, 259 are newly-created positions, 18 result from increasing the hours of existing positions, and 64 are hired via a contract. The five-year budgeting process that comprises the initial phase of Statewide implementation is ongoing, building toward an even greater staffing increase that will ultimately enable full Statewide caseload compliance.

At the outset of Statewide implementation in 2017, institutional provider offices were not equipped to handle the significant increase in staffing necessitated by the Statewide caseload relief requirements, particularly the projected staffing needed to comply with ILS caseload standards. From the beginning of the Statewide implementation process, ILS has prioritized negotiating with counties to improve institutional provider office space to accommodate the creation of the new positions required to achieve caseload compliance and, where needed, to create a more professional environment.

In many instances, these negotiations have been complicated and time-consuming and require counties to develop and share with ILS a specific plan for expanded space, which may include rent for new or expanded office space, renovation of pre-existing office space, or a combination of both. ILS then evaluates the plan to ensure that the request for office space funding is cost-effective, reasonable under the circumstances, justified by the amount of staffing needed to comply with caseload requirements, and will ensure a professional work environment.

Despite the individualized, labor-intensive aspect of this process, Statewide funding has already been used to dramatically improve the physical infrastructure for institutional provider offices statewide. Statewide funding has been budgeted for office space for institutional providers in 31 of the 52 non-*Hurrell-Harring* counties outside of New York City, and other institutional providers have utilized different sources of ILS funding for increased office space. In New York City, seven out of eight institutional provider offices have used significant amounts of Statewide funding for increased office space.

Statewide funding for office space has provided a variety of benefits for institutional providers. For instance, in Chautauqua County, a large rural county with dispersed population centers, Statewide funding has allowed the Public Defender Office to expand from “centralized services” located in Mayville, by adding offices in Dunkirk and Jamestown, which host the two largest courts in the county. By having offices closer to their clients, the Public Defender Office is able to provide better services, and clients who may not have the means to travel to the main office in

Mayville are often able to get to one of the satellite offices to meet with their attorneys. Using Statewide funding, the Public Defender Office has been able to staff all three office branches with the appropriate non-attorney support staff, such as investigators, case workers, and paralegals.

In Niagara County, Statewide funding for office space has facilitated the transition of the Public Defender Office from a staff of part-time attorneys who conducted public defense practice out of their private offices throughout the county into a staff almost completely consisting of full-time attorneys with a centralized office. Their original office had the capacity to house eight attorneys and seven non-attorney staff, which would not support the necessary transition of staff from part-time to full-time. With Statewide funding, the new office will accommodate at least 15 attorneys and 10 non-attorney staff.

Other providers have similarly used Statewide funding for office space to accommodate the additional staff required to achieve compliance with caseload standards. In Monroe County, which maintains the largest Public Defender Office in upstate New York, Statewide funding has enabled the office's eventual expansion to multiple floors within the same building with the addition of 4,000 square feet. In Livingston County, Statewide funding has enabled the county to engage in renovations that will expand the Public Defender and Conflict Defender Offices to accommodate the growing number of staff positions. The plans include client meetings rooms with computers that attorneys from both offices can use to review discovery materials with clients. There will also be a joint training room for both programs to hold officewide meetings and trainings. And the Public Defender Offices in both Chenango and Essex Counties moved into entirely new spaces that enhanced the offices' professional appearance and have enough office space to accommodate the staff required to comply with ILS caseload standards.

(2) Assigned Counsel Programs

The creation of professional office space is also a critical component of Assigned Counsel Program reform. Professional office space enables an ACP to properly function as an independent, well-managed public defense office capable of establishing a culture of quality representation among its panel attorneys. The *ILS Standards for Establishing and Administering Assigned Counsel Programs* ("ILS ACP Standards") clearly require each county to "provide suitable facilities so that the ACP can carry out its duties under County Law article 18-B and meet these Standards."¹ This includes a requirement that "each county shall establish an administrative office for its ACP" and that such office "shall have a suitable location, and suitable space, technology, equipment, and supplies to facilitate independent, professional representation."² The commentary to the ILS ACP Standards elaborates that:

The facilities, office space, equipment, technology, and supplies provided must allow the ACP to operate effectively and efficiently in a professional work environment; to carry on its activities independently from other entities, including other legal service providers within the same county; and to conduct confidential communications among management and staff. The Program should ensure that

¹ ACP Standards, Standard 4.1.

² ACP Standards, Standard 4.1.a.

private meeting space is available to panel attorneys for in-person meetings with clients and confidential phone conversations with incarcerated clients.³

The rapid growth of ACPs throughout New York State has necessitated that ILS allocate significant Statewide funding for the provision of suitable office space. Counties and ACP leaders have worked with ILS to utilize Statewide funding to develop professional office space in 21 counties throughout the state, and other ACPs have relied upon other sources of ILS funding to develop office space.

In Broome County, the newly created ACP became fully functional on January 1, 2022. The program began with space that consisted of an open area within a county building. The “office” itself was made of room partitions that did not reach the ceiling and failed to provide any privacy. Statewide funding allowed the ACP to move to a different county office with appropriate privacy, a conference room, and confidential space for panel attorneys to come into the office to do work and meet with clients. The location of the ACP’s office is also convenient for clients and provides ready access to a variety of other community-based programs.

Similarly, in Madison County, the newly created ACP utilized Statewide funding to procure new office space that is convenient to the County Court Complex, more professional, and larger than the former office, which consisted of a windowless closet in the basement of the county building. And in Herkimer County, Statewide funding has enabled the ACP, which was being managed from the Administrator’s private law office, to lease space in a local office building near the County Court. The space will house a newly created administrative support position, provide a central gathering space for panel members, and allow panel attorneys to meet with their clients at a location near the County Courthouse.

B. Transforming the Structure of New York State’s County-Based Assigned Counsel System by Creating High-Quality, Well-Managed Assigned Counsel Programs

The ILS ACP Standards recognize that “[w]ell-designed, properly maintained, and adequately funded [ACPs] play a vital role in ensuring justice for clients who cannot afford to retain an attorney in criminal defense or family law matters.”⁴ Unfortunately, prior to Statewide implementation, many counties had “unmanaged” ACPs without any administrative infrastructure to provide quality oversight and support of panel attorneys. Even the “managed” ACPs lacked the resources needed to meaningfully support panel attorneys in delivering quality representation and were often housed within entities such as an institutional provider or a County Attorney office. Prior to 2018, nearly every ACP in New York State lacked the structure necessary to meet the ILS ACP Standards’ requirement that lawyers “remain independent, meet their ethical obligations, and deliver quality representation.”⁵

ILS has worked collaboratively with counties to ameliorate these deficiencies and has developed a scalable model with a core structure that is being implemented throughout the state. The ILS ACP Standards provide the roadmap for the model, which was originally developed and

³ ACP Standards, Standard 4, Commentary.

⁴ ACP Standards, Preamble.

⁵ Id.

implemented in the five *Hurrell-Harring* settlement counties. The essence of the model consists of two principal categories that ILS has sought to implement: (1) the infrastructure necessary to manage an independent ACP; and (2) the resources necessary to allow panel attorneys to provide quality representation to their assigned clients.

(1) ACP Infrastructure Development

The critical first step toward developing an ACP that complies with the ILS ACP Standards is the creation of an independent program managed by an Administrator. Ideally the ACP will also have an independent Board to help guide the Administrator in fulfilling the Standards' requirements.⁶ The progress to date towards achieving this goal is impressive.

Currently, out of the 52 non-*Hurrell-Harring* counties outside of New York City, only Columbia and Delaware do not yet have an ACP Administrator position funded. Of the remaining 50 counties, only Hamilton, Livingston, Niagara, and Wyoming have programs that remain housed within an institutional provider or a County Attorney office. New York City's ACP is uniquely situated as it is managed and overseen by both the Mayor's Office of Criminal Justice and the Appellate Division First and Second Judicial Departments.

Statewide funding has proven instrumental in bringing about this monumental change. Thirty-six (36) counties have budgeted Statewide funding to create a new ACP Administrator position or to increase the hours of an existing part-time position and 14 counties that previously did not have ACP Administrators now have one in place. There are five additional counties currently working to recruit a new ACP Administrator (Greene, Jefferson, Otsego, Putnam, and Seneca).

The recent creation of programs in Westchester, Orange, Broome, and Cattaraugus counties stand out as models of transformational change. In Westchester County, the ACP was formerly situated within the Westchester County Legal Aid Society. Although the Legal Aid Society took admirable steps to introduce substantive resources for panel attorneys, the program lacked independence. Westchester County worked closely with ILS to develop model county legislation to establish an independent ACP. To date, the program has convened a governing Board, hired an Administrator and Deputy Administrator, and secured office space. In the upcoming year, they plan to utilize Statewide funding to implement a variety of substantive programs consistent with the ILS ACP Standards.

Similarly, both Orange County and Cattaraugus County secured independence for their ACP programs by moving them out of the County Attorney's office. Orange County modified Westchester County's model legislation to create a program that fits the needs of their county. And in Cattaraugus County, the ACP was removed from the County Attorney's office and now is functioning as an independent county agency. Broome County completely transformed its previously unmanaged ACP into a dynamic program that promises to be a regional model. This change occurred after years of work by the Public Defender to persuade Broome County officials to create this much needed program and to hire a strong, full-time Administrator committed to quality representation. The availability of Statewide funding for this revitalized ACP proved to

⁶ ACP Standards, Section 3, Required Structure (Standards 3.1 through 3.3)

be the leverage needed to convince county officials to take this important quality improvement step.

(2) Substantive Legal Support and Resources

The ILS ACP Standards require each county to ensure that its ACP provides assigned counsel with access to “services necessary for quality representation, including supervision, mentoring, consultation, training, and second-chair programs.”⁷ The ACP Standards also require the ACP to “ensure that individual assigned counsel have access to the non-attorney professional services needed at every phase of the case” including “access to investigatory, expert, social work, mental health, interpreter, and other relevant services.”⁸ Statewide funding is providing access to each of these resources to virtually every ACP throughout New York State. Only two counties, Delaware and Columbia, do not have an ACP with funding available for some combination of these services; Delaware County has focused on utilization of Statewide funding to establish a new Public Defender Office and Columbia County will be focusing on allocating Statewide funding for building an ACP infrastructure in the ongoing budget development process.

i. Access to Non-Attorney Professional Services (50 counties)

As noted above, Executive Law § 832(4)(c) requires ILS to ensure that attorneys providing constitutionally mandated, publicly funded representation in criminal cases for people who are unable to afford counsel have access to and appropriately utilize investigators, interpreters, and other expert services on behalf of clients. Consequently, establishing budget lines for these critical services has remained a top priority for ILS. Fifty (50) out of 52 non-*Hurrell-Harring* counties and New York City have utilized Statewide implementation funding for this purpose. Of the two counties that have not done so (Delaware and Franklin), one of them (Franklin) has ample non-attorney professional services funding from a different ILS source, and one (Delaware) has devoted Statewide implementation funding to establishing a new Public Defender Office.

ii. Access to Funding for Training (47 counties)

Executive Law § 832(4)(c) requires ILS to ensure that attorneys receive training and possess the necessary qualifications and experience to handle the types of cases to which they are assigned. To date, 47 ACPs have utilized Statewide funding to provide training opportunities for panel attorneys.

iii. Creation of Mentoring Programs (37 counties)

As explained in the ILS ACP Standards, “(m)entoring involves more experienced and highly qualified attorneys working closely with less experienced attorneys to foster their professional growth and development. It is a well-recognized means of helping new attorneys develop criminal defense or family law representation skills, acquire legal knowledge, build confidence

⁷ ACP Standards, Standard 4.2 (inclusive of Standards of 4.2.a, 4.2.b, 4.2.c., 4.2. d., and 4.2.e.)

⁸ ACP Standards, Standard 8.5.

and competence, and enhance professionalism.”⁹ The five *Hurrell-Harring* counties modeled the development of Mentoring Programs, and demonstrate how such programs can differ based on the particular needs of the county. Some counties, for example, have one mentor while others have a cadre of mentors and resource attorneys available to both less experienced attorneys as well as more experienced attorneys who want an opportunity to consult when faced with particular thorny legal or factual issues in a case. Statewide funding has enabled 37 ACPs in non-*Hurrell-Harring* counties to similarly establish Mentor Programs to provide a critical support needed for quality representation.

iv. Implementation of Second Chair Programs (37 counties)

ILS ACP Standards provide a clear description of the benefits that panel attorneys can derive from Second Chair Programs:

Second-Chair Programs are an effective resource to enable panel attorneys to obtain the trial experience necessary to provide competent representation. The pairing of less experienced and more advanced attorneys may occur in a few distinct ways. For example, a new attorney may serve as second chair to a more seasoned assigned counsel whose client’s case is going to trial. In addition, a panel attorney with some misdemeanor or low-level-felony trial experience who is assigned to a more complex case or who wishes to begin receiving such assignments, may gain necessary trial skills via a second-chair opportunity. Finally, Second-Chair Programs are critical when an experienced panel attorney is assigned to a case involving a serious charge or complex issues. In such instances, the primary attorney can receive needed assistance from the secondary attorney, who can learn invaluable lessons in such role.¹⁰

Like Mentor Programs, the five *Hurrell-Harring* counties all have established, well-utilized Second Chair programs. With the availability of Statewide funding, 37 ACPs in non-*Hurrell-Harring* counties now also have Second Chair Programs.

v. Supervision/Consultation (29 counties)

The ILS ACP Standards require each ACP to “ensure that its panel is appropriately supervised by an attorney or attorneys” and that panel attorneys “have access to resources to assist in addressing complex or systemic issues arising during individual representation.”¹¹ ILS has devoted considerable resources to helping ACPs develop the structure necessary to meet these standards. These structural resources include the creation of Supervisory or Resource Attorney positions, funding to allow panel attorneys to consult with an attorney with appellate expertise, or in larger programs, the creation of specialized attorney positions such as Training Directors or Forensic Deputies.

⁹ ACP Standards, Standard 4.2.b

¹⁰ ACP Standards, Standard 4.2.e, Commentary

¹¹ ACP Standards, Standard 4.2.a and Standard 4.2.c.

In larger ACPs, such as those in Erie County and New York City, Statewide funding has been used to create a diverse array of substantive attorney positions that can provide support for all aspects of criminal defense cases. In Erie County, Statewide funding has helped establish the ACP as an invaluable resource for panel attorneys. The ACP has hired a Supervising Attorney, a Training Director, a Forensic Science Deputy Attorney, a Criminal Defense Quality Attorney, and an Appellate Resource Attorney. This team of attorneys frequently meets with panel attorneys to provide case consultation, legal research, training, and expert witness referrals. Similarly, in New York City, the ACP has utilized Statewide funds to hire two Supervising Attorneys, a Forensic Director, a Training Director, an Adolescent Coordinator, and a Mental Health Director. After years of being understaffed, the New York City ACP is finally able to begin providing the support that the large New York City panel needs.

Smaller counties have also utilized Statewide funding for substantive legal support for ACPs. In Cayuga County, the ACP recently obtained authorization from the county to hire a Supervising Attorney—a major development for the ACP, which for years has been managed by a non-attorney who has considerable administrative experience, but not the requisite legal expertise. In Oneida County, the ACP has used funding to permit panel attorneys to contract with a legal research specialist to assist with trial preparation and trial support. And in Rockland County, the ACP has utilized Statewide funding to hire a Quality Enhancement Attorney to support the work of its panel attorneys.

C. Statewide Reform Efforts Have Resulted in New Public Defender Programs

The ILS ACP Standards recognize that county plans for the delivery of mandated services under County Law Article 18-B “are generally strongest when they also include the services of a full-time public defender organization.”¹² As the ILS ACP Standards state:

Fully funded institutional providers can develop special expertise in public defense cases; provide client-centered representation by including investigators, social workers, and other necessary professionals on staff; and advocate for improvements in the criminal defense and family law systems. Nationally, all major urban jurisdictions include an institutional public defense provider, as do the vast majority of counties in New York State.¹³

Prior to the initiation of Statewide implementation, seven counties did not have an institutional provider and relied solely upon an assigned counsel system to provide mandated services under County Law Article 18-B. Statewide funding has enabled the creation of Public Defender Offices in three counties, with a fourth county in the process of creating a Public Defender Office. As of December 2021, in Clinton County, the Public Defender Office has a staff of seven attorneys and three non-attorneys all funded by the Statewide contract. Delaware County’s Public Defender Office has a staff of three attorneys and one non-attorney, and Hamilton County’s Public Defender Office has one full-time attorney, one part-time attorney, and one part-time support staff. All three of these programs are also in the process of adding additional staff during their final year of Statewide implementation. Additionally, Oswego County enacted a local law in

¹² ACP Standards, Standard 2.1, Commentary (citing ABA Defense Services Standards, Standard 5-1.2(a)).

¹³ *Id.*

2021 to create a Public Defender Office and is currently posting for and recruiting an experienced and committed leader to run the office. Once up and running, the county is committed to using Statewide funding to hire the attorney and non-attorney staff needed to deliver quality representation. And finally, Essex County has created a Conflict Defender Office staffed by one attorney with the prospect of adding additional staff during the final year of Statewide implementation.

The creation of Public Defender offices has positively impacted mandated criminal defense representation in precisely the way described by ILS' ACP Standards. In Hamilton County, Public Defender Sterling Goode reports that his office has vastly improved the quality of criminal defense representation in three critical areas: (1) providing clients with attorneys who possess a great deal of criminal defense expertise; (2) ensuring that all local courts have defense attorney coverage; and (3) addressing policy concerns confronting mandated criminal defense. The office, although small, possesses an extraordinary amount of expertise in criminal defense with the Public Defender and First Assistant having a combined 70 years of criminal defense experience. The office is improving the overall functioning of the entire court system by providing consistent and uniform arraignment coverage in all justice courts. Indeed, the office has missed only one arraignment since the beginning of its existence and that involved a situation where a judge incorrectly determined that an attorney appearance in a Vehicle and Traffic Law case was not necessary, a situation that was quickly corrected. As this missed arraignment situation demonstrates, the creation of a Public Defender Office has fostered enhanced communication with other players in the criminal justice system in terms of problem solving. In recent months the Hamilton Public Defender Office has helped resolve issues relating to statutory requirements for providing pretrial discovery on the part of the prosecution and improving the availability of prosecutors who possess the authority to conference and resolve cases. The office has also helped resolve issues relating to arraignment coverage by orchestrating a meeting with representatives of multiple police agencies to review statutory requirements for arraignments and the issuance of appearance tickets. This meeting has significantly impacted the smooth running of the criminal justice system at the justice court level while making sure police agencies are acting in a manner consistent with statutory authority.

Similarly, in Clinton County, Public Defender Jamie Martineau reports that his office has also significantly transformed mandated criminal defense representation. Like the Public Defender Office in Hamilton County, the creation of a Public Defender Office in Clinton County has both improved the quality of public defense representation provided to clients and helped the court system function more efficiently. The office is staffed by experienced criminal defense attorneys who receive ongoing training and supervision, and who have ready access to the investigative and expert support resources that they need. They have the time to meet with clients prior to every court appearance and they are available, accessible, and ready to proceed when they get to court. These improvements have benefitted both the clients and the courts, thereby improving the overall criminal justice system.

D. Adding or Bolstering the Technological Infrastructure Needed for Quality Representation.

The New York State Court of Appeals has long recognized that “broader pretrial discovery enables the defendant to make a more informed plea decision, minimizes the tactical and often unfair advantage to one side, and increases to some degree the opportunity for an accurate determination of guilt or innocence.”¹⁴ In 2019, the New York State Legislature acted upon this recognition by substantially expanding the pretrial disclosure requirements of the prosecution and defense by repealing Criminal Procedure Law (CPL) Article 240 and enacting CPL Article 245. “The legislative history to Article 245 pounds a steady beat: that broad pretrial discovery is essential to a fair and just criminal justice system; that the discovery afforded by the former Article 240 was unduly restrictive; and that the comprehensive discovery provided by Article 245 will promote better and more efficient outcomes.”¹⁵ These changes went into effect in January 2020 with some modifications over the subsequent two years.

The new discovery statute radically altered the landscape of pretrial information exchange requirements. The new disclosure obligations placed upon the prosecution have had their intended effect, constituting a dramatic shift in the amount of information and material that the prosecution must now provide to the defense early in the case, prior to plea negotiations. Instead of trials and plea negotiations occurring without critically important case-related information, defense attorneys now receive extensive information about every case at an early stage in the proceedings. This in turn has transformed that way mandated criminal defense providers handle their cases.

Defense attorneys report that the new statute has had numerous positive effects upon their practice. According to a recent survey of defense attorneys from around New York State, discovery reform has enabled them to: (1) more effectively investigate their cases and develop case strategies; (2) prepare more thoroughly for pretrial hearings and trial; (3) negotiate with the prosecution for agreed upon dispositions in their cases; and (4) advise their clients about the best course of action.¹⁶

Discovery reform has also placed new burdens upon defense counsel. First, the sheer volume of material provided by the prosecution carries with it a corresponding need to spend significant time reviewing and analyzing that material. Second, the defense now receives a tremendous amount of electronically stored information, which means that mandated criminal defense providers must now develop their technological capacity to review and store that information.

¹⁴ *People v. Copicotto*, 50 N.Y. 2d 222, 226 (1980).

¹⁵ *People v. DeMillo* 117 N.Y.S. 3d 830, 832 (2020) (citing Memorandum in Support of Legislation, Assembly Bill A04360; Sponsor's Memo to Senate Bill S1716).

¹⁶ See “The Implementation of Discovery Reform in New York State: Report of a Defense Attorney Study Conducted Jointly by The Chief Defenders Association of New York, The New York State Defenders Associations, The New York State Association of Criminal Defense Lawyers, and the New York State Office of Indigent Legal Services,” March 28, 2022, available at: https://cdn.ymaws.com/www.nysda.org/resource/resmgr/bail_and_discovery/_NYS_Discovery_Reform_Defense.pdf.

Counties have recently begun to utilize Statewide funding to address these concerns by creating budget lines for both technology and personnel. For instance, the Albany, Broome, and Monroe County Public Defender Offices have all created full-time Digital Media/Digital Evidence Technician positions that will assist attorneys in screening, processing, viewing, and storing digital evidence obtained via discovery and case investigation. In Erie County, the Assigned Counsel Program implemented both a Digital Evidence Specialist and a Trial Support Technician position. The Trial Support Technician provides invaluable support to panel members by facilitating preparation of exhibits and technology and then helping with their use at hearings and trials. Given increasing awareness of the needs related to the new pretrial discovery regimen, ILS expects that the Year 5 budgeting process will include replication of these positions in other mandated criminal defense provider programs throughout New York. It bears noting, however, that the 2019 discovery reform legislation occurred after ILS had developed a plan for Statewide implementation and estimated the cost of Statewide implementation to be \$250 million. This cost does not account for the personnel and technological infrastructure needed to accommodate the voluminous amounts of discovery providers now receive. ILS anticipates that additional State funding for mandated criminal defense providers may be needed for successful implementation of discovery reform.

E. Building the Necessary Case Management System and Data Collection Infrastructure

ILS' ability to assess both the pace of Statewide implementation and its preliminary impact on the quality of mandated criminal defense representation relies on the ability of all mandated providers to collect, maintain, and report accurate and complete data to ILS on both an annual basis via the ILS-195, and a biannual basis via the Performance Measures Progress Report. Prior to Statewide implementation, all providers of mandated representation were required to report annual caseload, expenditure, and staffing data utilizing the UCS-195 form. In 2019, ILS introduced the updated three-part ILS-195 form, and for the first time, in Part 1 of the ILS-195, all mandated providers were required to report expenditure and staffing data by type of representation (criminal versus Family Court). In 2020 and 2021, providers began reporting case assignment data in Part 2 and case disposition data in Part 3 of the ILS-195, utilizing the ILS caseload standards' seven criminal caseload categories as well as trial and appellate data for parental representation in Family Court. Responses to the ILS-195 comprise the basis for the quantitative Caseload section of this report as well as the more detailed provider level data contained in Appendices A and B.

This refined data collection required updates to all existing case management systems (CMSs) currently in use by mandated representation providers and the investment in new CMSs for those providers who had not yet begun electronic collection of data on all cases assigned to their programs. The three-year rollout of the ILS-195 data reporting requirements, including the measured introduction of new data points each year, allowed providers to develop and implement new data reporting at a sustainable pace, while also allowing CMS vendors the necessary time for technical updates to their systems. The partnership between ILS, providers of mandated representation, and CMS vendors speaks to the importance of the data that is collected and reported to ILS.

ILS coupled the creation of the new ILS-195 form and the Performance Measures Progress Report form data reporting requirements with detailed training plans as well as the creation of county-based designated Data Officers. The Data Officers are the liaisons between mandated providers and ILS, serving as a county-based resource to support providers' data reporting efforts. In 2021, ILS hosted six virtual Data Officer trainings on the biannual Performance Measure Progress Report and annual ILS-195 submissions. Training topics included the newly created Data Officer Best Practices manual intended to assist recently appointed county Data Officers; the different data collection challenges faced by institutional providers compared to ACPs; completing the ILS-195 and the Performance Measures Progress Report form; and presentations on the prior year's annual reports.

By May 2021, using Statewide funding, ILS increased our capacity to further support institutional and ACP providers' data collection efforts with the addition of two new ILS staff members: the ILS Data Scientist and ILS Data Outreach Officer. In response to requests for information about available CMSs, the ILS Data Scientist surveyed all vendors currently working with New York's mandated representation providers and compiled a summary of the various functionalities offered by each CMS into a chart made available on the ILS website.¹⁷ This chart has become one of the most requested resources the ILS Research Team has developed.

Simultaneously, the ILS Data Outreach Officer began contacting all county-based Data Officers to assess the challenges that mandated defense providers are confronting in their efforts to meet ILS' reporting requirements. Through these conversations, the Data Outreach Officer has been able to tailor the virtual Data Officer trainings to meet the stated needs outlined by the county-based Data Officers based on their work with the mandated providers and their data entry staff. As Covid-19 restrictions were lifted, the Data Scientist and Data Outreach Officer began traveling to in-person meetings with county-based Data Officers, Chief Defenders, and other county officials. The Data Outreach Officer also created a quarterly newsletter to keep county-based Data Officers apprised of the progress that their colleagues are making and to highlight the information contained in ILS annual reports based on provider-reported data.

ILS continues to work with mandated providers on their efforts to create protocols and procedures that ensure the timely and accurate collection of data. As stated throughout this report, the global pandemic had a significant impact on the practice of public defense across the state, including the ability of providers to meet data reporting requirements. For those providers without an existing CMS at the start of Statewide implementation, Statewide funding has been allocated to support the acquisition and implementation of new CMSs. However, as mandated providers shifted to meet the needs of clients and courts during the pandemic, their capacity to investigate, identify and acquire a new CMS was stymied.

A number of ACPs continue to struggle to implement a cohesive practice of collecting, maintaining, and reporting data to ILS. To meet this challenge, the ILS Research Team has taken several steps, including site visits to ACPs to directly assist their staff with data collection. ILS intends to continue these onsite visits to assist mandated providers in developing interim practices to collect data while they await the implementation of their CMSs. These visits are an

¹⁷ See https://ils.ny.gov/files/CMS%20Comparison%20Chart_2.0.pdf.

opportunity to work with the providers to develop comprehensive data collection strategies that will allow for the collection of all required data moving forward. ILS will also continue to offer Data Officer trainings to continually refine the Data Officers' role within their counties and support their ability to offer substantive assistance to providers.

F. The Ongoing Statewide Implementation Challenge: Attrition and Recruitment

Despite the progress described above in building quality improvement infrastructures, the staffing and expenditure data set forth in the next section of this report shows that the pace of hiring has slowed over the past two years. And county officials and mandated providers throughout the state have shared with ILS their problems with staff attrition and attorney recruitment.

The Covid-19 public health crisis significantly impacted all aspects of the criminal legal system, including the functioning of mandated public defense providers. In 2021, as infection rates ebbed and flowed, providers constantly needed to pivot, transitioning back and forth between virtual versus in-person court appearances and remote versus on-site work schedules. The ongoing health concerns and need for vigilance combined with the constant shifting in schedules and work environment has had an impact on the morale of many people who work in the public sector. On a national scale, since the pandemic, the public sector has been experiencing significant problems of attrition and recruitment.¹⁸ As a Center for American Progress report noted:

[T]he state and local government workforce has struggled to regain pandemic-related job losses, with 685,000 fewer people employed compared with pre-pandemic numbers. Its labor market recovery has been notably slower than that of the private sector, despite infusions of federal funding.¹⁹

Notably, at the municipal level, job losses in the public sector legal profession rank amongst the highest, with a 45.2% decrease between 2019 and 2021.²⁰ For lawyers who engage in public criminal defense work, the high stress associated with work (which involves the liberty of clients), the low pay, and the historical under-valuing of the public defense function have always

¹⁸ See for example, Bobby Ghosh, "Government Jobs Are Plentiful, But Nobody Wants Them," Bloomberg News, September 16, 2022, available at: [Public Sector Jobs Are Proving Hard to Fill - Bloomberg](#). As this article notes, while the private sector employment is recovering from the pandemic, state and local governments are well short of pre-pandemic levels.

¹⁹ See Center for American Progress, "Investments and State and local Government Workforce Will Deliver Crucial Services and Create Economic Security," available at: [Investments in the State and Local Government Workforce Will Deliver Crucial Services and Create Economic Security - Center for American Progress](#) (internal citations omitted).

²⁰ Id.

caused attrition and recruitment challenges, but the pandemic has made these challenges worse than ever before,²¹ and jobs in the private sector, which are plentiful,²² are more alluring.

New York’s mandated public defense providers are not immune from this problem. Indeed, a careful review of Appendix A of this report reveals that more than one-third (29 of 80) of the institutional providers across the state reported fewer full-time attorney staff in 2021 than in 2020. This decrease in attorney staff is not a function of mandated providers failing to take steps to fill vacant positions—they are working diligently to do so. But they are struggling to fill as quickly as they would like both their vacated and the new positions created with Statewide funding. Mandated defense providers report receiving far fewer applications for positions than they have in the past, and often the applicants lack the requisite experience, qualifications, or demonstrated commitment needed for the posted positions. Providers typically must keep job postings open far longer, or post for the same position multiple times. Put simply, it is taking far longer than ever before to fill both vacated and the new positions created with Statewide funding.

There are a variety of strategies that mandated criminal defense providers are using to address the challenges of attrition and recruitment. Where possible, providers are using Statewide funding to supplement or increase staff salaries. Providers are also using Statewide funding to create internship programs or bolster existing ones—an effective strategy for cultivating an interest in a provider office while a potential applicant is still a law student or even undergraduate. Additionally, the public defense community is collaborating to host job fairs and other recruitment events. For example, the Chief Defender Association of New York (CDANY) and the New York State Defenders Association (NYSDA) are partnering with ILS and the University at Buffalo School of Law to host a virtual public defense job fair on November 4, 2022.²³

Ultimately, however, mandated providers will continue to confront recruitment and attrition challenges until public defenders receive fair and competitive compensation. While ILS has worked with providers on developing and implementing competitive compensation structures, there are barriers. For institutional providers, there is often county reluctance to increase salaries because of the impact on other county departments, even when funding is included in the Statewide contract to do so or is otherwise made available during the Statewide budget negotiation process. And mandated providers that have both criminal defense and Family Court practices are typically unable to use Statewide funding to increase the salaries in their criminal defense practice because there is no State funding available for a similar increase for the Family Court practice.

²¹ See, for example, Jonah E. Bromwich, “Hundreds Have Left N.Y. Public Defender Offices Over Law Pay,” New York Times, June 9, 2022, available at: [Hundreds Have Left N.Y. Public Defender Offices Over Low Pay - The New York Times \(nytimes.com\)](https://www.nytimes.com/2022/06/09/nyregion/public-defender-offices-low-pay.html). As one lawyer in this article stated, public defenders are simply not being paid what they are worth.

²² See U.S. Department of Labor Blog, “June 2022 Jobs Report: Private Sector Recovery, Historic Growth,” (noting that since Biden took office, the private sector has added more than 9 million jobs and has more than fully recovered from the pandemic-related job loss), available at: [June 2022 Jobs Report: Private Sector Recovery, Historic Growth | U.S. Department of Labor Blog \(dol.gov\)](https://www.dol.gov/newsroom/factsheets/2022/june2022-jobs-report-private-sector-recovery-historic-growth)

²³ Information about this 5th Annual New York State Public Defenders Career Fair is available here: [New York State Defenders Association \(nysda.org\)](https://www.nysda.org/career-fair).

For ACPs, the problem is the hourly rates of compensation, which are set forth in County Law § 722-b and which have not been increased since 2004. The stagnant, insufficient hourly rates have produced a crisis in ACPs throughout the state, with people facing gaps in representation, judges struggling to find attorneys willing to take additional cases, and overwhelming caseloads for those attorneys who do accept new cases.

Notably, the failure to increase the assigned counsel rates not only negatively impacts the caseloads of ACP attorneys, but also the ability of institutional providers to achieve and maintain compliance with the ILS caseload standards. For institutional providers, caseload standards compliance requires not only having enough attorneys but also utilizing a caseload overflow plan by which “overflow” cases resulting from an unusually high influx of new cases, staff attrition, or a combination of both can be assigned to the ACP. Utilization of a caseload overflow program can also be a means to achieve caseload standards compliance when there are legitimate reasons to limit the number of new attorney positions an institutional provider creates with Statewide funding. However, a caseload overflow plan relies on having a vibrant ACP with enough qualified panel attorneys to handle the “overflow” cases without becoming overburdened themselves. But, with the hourly rates being stagnant for so long, ACPs across the state are bleeding attorneys, and very few have the attorney capacity needed to accept overflow cases in addition to the conflict cases they must accept.

This important qualitative piece of information—the problem of attrition and recruitment—provides important context for the more quantitative Caseload section of this report, which follows.

II. Caseload Standards Compliance: The Quantitative Data

The information in this section of the report contains data pertaining to the 2021 caseloads of every provider of criminal defense representation in the 52 non-*Hurrell-Harring* settlement counties and New York City, the numbers of attorneys employed to handle those caseloads, resources expended by providers, and historical data to show trends over time. As in prior years, this report analyzes changes over time regarding the adequacy of caseload specific resources available to mandated providers of criminal defense representation.

Institutional Providers v. Assigned Counsel Programs

As noted in previous reports, caseload analysis of institutional providers differs significantly from the analysis of caseloads in ACPs because of fundamental structural distinctions between the two types of programs. For institutional providers that employ attorneys as staff members on either a full or part-time basis to provide representation, the analysis compares the total number of weighted cases to the total numbers of attorneys and support staff available. This results in a “weighted cases per attorney” metric that indicates resource sufficiency for these providers that can be tracked over time to monitor whether weighted caseloads per attorney increase or decrease. ACPs do not provide representation with staff attorneys whose employment status is knowable—i.e., full or part-time, etc. Instead, these programs deliver representation using private attorneys paid an hourly statutory rate to represent clients on cases to which they are assigned.²⁴

²⁴ See N.Y. County Law §722-b, which sets the hourly rate for assigned counsel attorneys.

This poses a significant challenge in assessing weighted cases per attorney. Accordingly, our analysis compares the total number of cases in these programs to the amount of funding spent on representation, resulting in a “spending per weighted case” metric. While this may not be the only measure of ACP caseload standard compliance, it is a meaningful way to assess resource sufficiency as well as attorney use of resources for ACPs and can be tracked over time to monitor whether the use of resources is increasing or decreasing. Additionally, it is the measure that ILS has used in previous caseload reports.

Overall, as the Statewide expansion of the *Hurrell-Harring* settlement reforms progresses, ILS expects the weighted cases per attorney in institutional provider offices to decrease, and the spending per weighted case in ACPs to increase.

How This Report Differs from Previous ILS Caseload Reports

The Caseload section of this report and 2021’s Caseload Report differ from the first three annual reports in several significant respects.

First, this report and the 2021 Caseload Report analyze provider caseloads by using the significantly more precise and appropriate ILS caseload standards enunciated in *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement* which differentiate criminal cases by seven case types. Prior to the 2021 Caseload Report, ILS measured case weights according to a slightly revised version of the 1973 National Advisory Council (NAC) standards of 150 felony assignments or 400 misdemeanor assignments or 25 appeals assignments per year.²⁵ Though these standards have lost credibility over time,²⁶ ILS previously relied upon the NAC standards because most providers of mandated criminal defense representation lacked the capacity to provide accurate case data under the seven categories of cases required by the ILS caseload standards. However, since 2018 ILS has worked with and prepared providers for this change. As of 2020, providers are required to report their caseloads using the seven criminal case categories, and ILS is now able to use these improved measurements for the second time in the current report.

Second, ILS now also collects data that distinguishes attorney time dedicated to criminal cases and attorney time dedicated to Family Court cases for both institutional providers and ACPs. Most providers of mandated representation across the state represent clients in both criminal court and Family Court. Statewide implementation, however, provides funding for the improvement of criminal representation exclusively. In calculating the average weighted cases per attorney, the ability to collect more refined data distinguishing between time dedicated to criminal and Family Court cases allows ILS to separate out the impact that reform is having on criminal representation from Family Court representation for attorneys employed by institutional provider offices.

²⁵ This slightly revised version of 367 weighted cases (or 138 felonies, or 23 appeals) in any given year was adopted by the ILS Board in September 2014. This revised NAC caseload standard takes into account the need to factor in supervisory resources. For a more comprehensive explanation see *A Determination of Caseload Standards pursuant to §IV of the Hurrell-Harring v. The State of New York Settlement*, December 8, 2016, Section IV, p. 12.

²⁶ See *A Determination of Caseload Standards pursuant to §IV of the Hurrell-Harring v. The State of New York Settlement*, Section I, pp. 2-5.

For ACPs, this report continues to apply the previously used case weights under the slightly revised NAC standards utilized in previous reports while also setting forth information in accordance with the ILS criminal caseload standard case weights. As of 2020, ILS started collecting more refined data from ACPs on the number of cases closed in the new seven criminal case types as well as the total number of attorney hours reported for cases closed for these case types. Yet, given that 2020 was the first year ILS requested the more refined data and that request coincided with the onset of the Covid-19 pandemic, many ACPs struggled to provide accurate and complete data. Moreover, as discussed earlier in § I, E of this report, more ACPs than institutional providers have needed to start “from scratch” in setting up a data collection and reporting system to meet ILS’s reporting requirements, and ILS continues to work with ACPs on creating a data recording and reporting infrastructure and funding CMSs to improve ACPs’ ability to collect and report more refined and accurate data.

A third important way in which this and last year’s annual Caseload Reports differ from previous reports is that both capture information on caseloads, staffing, and expenditures during the first two years of an unprecedented public health crisis. March 2020 marked the onset of the Covid-19 pandemic. As described earlier in this report, the pandemic deeply impacted the delivery of public defense in New York State. Court delays, case filing and assignment delays, hiring freezes, and an increasing backlog of cases produced an extreme challenge and continues to directly impact the caseloads, staffing numbers, expenditures, and weighted numbers presented in the current report.

Although we report numbers that indicate the extent to which mandated criminal defense providers in New York State are moving towards caseload compliance, it is premature to draw definitive conclusions from the data presented in this report. First, Executive Law § 832(4) was not fully funded until this current fiscal year (FY 2022-23), thus for 2021 ILS does not expect that providers be compliant with caseload standards. Second, and perhaps more importantly, the pandemic significantly impacted the number of new case assignments and the ability to hire new attorneys—which are the two components of caseload standard compliance. ILS cannot yet determine, based on the data collected, the exact impact Covid-19 has had on providers’ caseloads, staffing, and expenditures. For instance, although we anticipated a decrease in the number of new case assignments and expenditures, the data does not reveal exactly how much of this decrease is due to the Covid-19 pandemic and how much of it may result from other factors such as Statewide implementation, other criminal justice reforms, or other unobserved factors. Consequently, although ILS hoped to present the first and second year of “new baseline data” in 2020 and 2021—using the new and improved seven criminal case types—due to the Covid-19 pandemic and its related impact on the public defense system in New York State the data does not reliably provide an accurate baseline. It may take a few years to set an appropriate baseline, since the extent to which new case assignments continue to be impacted by the pandemic and criminal justice reforms remains unknown. Moreover, the increased backlog of cases created by court and other delays due to Covid-19 will continue to impact attorney-workloads (i.e., current number of cases) for the next few years. In other words, weighted attorney caseloads based on *new* case assignments in the next few years may not accurately reflect attorneys’ *actual workload* created by the “backlog” of pending cases.

Presentation of the Caseload Data

The caseload numbers that follow are presented in two ways. First, we report the 2020 and 2021 number of cases by using the seven new criminal caseload categories for institutional providers and ACPs. Then, we apply a conversion method (described in Appendix C) and compare the converted 2020 and 2021 caseloads to those of the years before that utilized the slightly revised NAC standards. As we anticipated a significant decrease in the number of new cases handled in the years 2020 and 2021 because of the Covid-19 pandemic, this comparison is useful to get a rough idea of the magnitude of this decrease.

This report relies on data collected annually by ILS on the caseloads, staffing, and expenditures of providers of criminal representation in the 52 non-*Hurrell-Harring* counties outside New York City for the calendar years 2012-2021, and in New York City for the calendar years 2017-2021. The data include the reported numbers of homicides, felonies, misdemeanors/violations, Family Court cases, and criminal appeals opened in each provider in the year in question and, as of the calendar year 2020, the number of violent felonies, other felonies, misdemeanors/violations, parole violations, post-dispositions, appeals of a guilty plea, appeals of a verdict, Family Court cases, and Family Court appeals. In addition, the data include the number of attorney and non-attorney staff in each institutional provider on July 1 (2012-2019) or December 31 (2020-2021) of the year in question, expressed in full-time equivalent (FTE) terms; and the total expended by the provider across the whole year. Although ILS collected data for all the counties and providers in the state (totaling 159 providers in 2021), we omit from this report any data relating to 11 providers in the five *Hurrell-Harring* settlement counties and the 11 providers that engaged solely in Family Court representation. Thus, our dataset is comprised of 137 providers of mandated representation.

The specific techniques used to collect these data were consistent across the years in which the data were collected and were as follows.

- First, ILS received annual reports, known historically as the “UCS-195” and more recently the “ILS-195,” directly from providers and extracted from those reports data on caseloads, staffing, and expenditures for all providers where available.
- Second, where those reports were missing, incomplete, facially inaccurate, or combined statistics for multiple providers into a single form, ILS followed up with providers for clarification and corrections.

The dataset itself is organized by provider of representation: where we speak in this report about caseloads, staffing, and expenditures, the implicit understanding throughout is that these are properties of individual providers of mandated defense representation. To clarify the need for data to be broken down appropriately by provider, ILS has developed the following definition of “provider,” which is set forth in the ILS-195:

A provider is a public defender office, conflict defender office, legal aid society, assigned counsel program, or any other office, firm, individual, or entity that provides representation to persons financially unable to afford counsel in criminal or Family Court

cases as defined in NY County Law 18-b. We consider assigned counsel ‘providers’ to exist in counties even where no formal administration exists and judges assign counsel ad hoc. Except in New York City, we consider providers to be specific to a county. Where a single organization supplies representation in multiple counties (sometimes called a ‘regional’ program), separate data must be submitted for services provided by that organization in each county respectively. Where one person or entity oversees two or more providers according to this definition (as, for example, where public defender offices oversee assigned counsel systems) separate data must be submitted for each provider.

Across the years for which the data has been gathered, the number of providers of representation has changed slightly, generally as the result of the addition of new programs providing legally mandated representation. In 2021, there were 137 providers of mandated criminal representation across the 52 non-*Hurrell-Harring* counties and New York City. Twenty-six (26) of these were dedicated only to criminal representation; the remaining 111 carried a mixture of Family Court and criminal cases.²⁷ Figure 1 shows the trend in the number of providers of representation across these counties and New York City since 2012, while Table 1 notes the specific changes in providers that occurred each year.

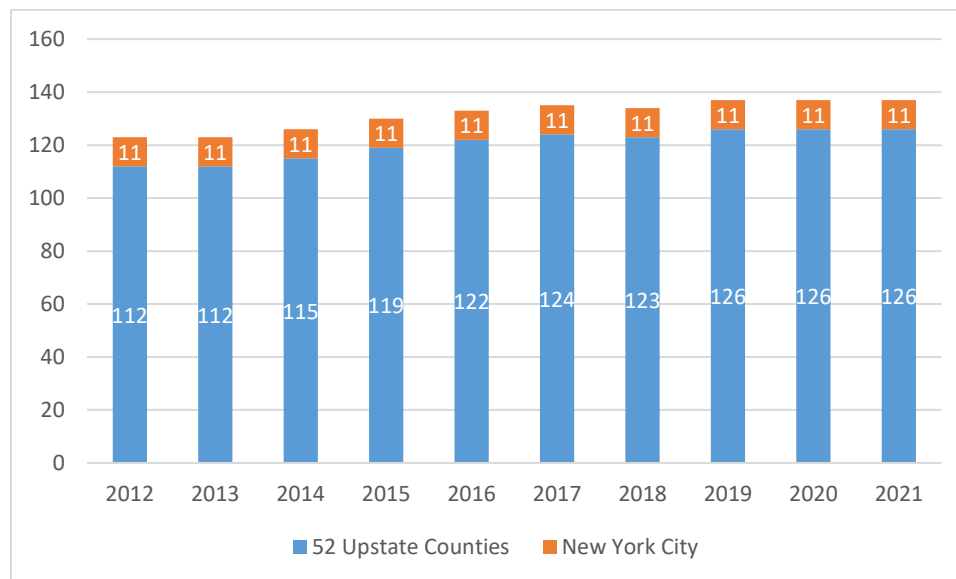
Table 1: Provider changes by year.

Year	Provider changes
2014	<ul style="list-style-type: none"> Appellate representation programs in Cattaraugus, Genesee, and Orleans Counties added.
2015	<ul style="list-style-type: none"> Appellate representation programs in Otsego, Saint Lawrence, and Warren Counties added. Yates County Conflict Defender added.
2016	<ul style="list-style-type: none"> Franklin County Alternate Conflict Defender added. Steuben County Conflict Defender added. Appellate representation program in Fulton County added.
2017	<ul style="list-style-type: none"> Third Alternate Conflict Defender in Columbia County added (program existed since 2015 but took criminal cases for the first time). Appellate representation program in Cortland County added.
2018	<ul style="list-style-type: none"> Appellate representation program in Livingston County added. Franklin County Alternate Conflict Defender Office abolished. Third Alternate Conflict Defender in Columbia County added for Family Court cases.
2019	<ul style="list-style-type: none"> Public Defender in Clinton County added.

²⁷ One provider, the Regional Appellate Program in Livingston County, reported not handling any cases in 2021.

- Public Defender in Delaware County added.
 - Appellate representation program in Saratoga County added.
- 2020
- Public Defender in Hamilton County added.
 - Attica Legal Aid Bureau in Wyoming County takes Parole Violation cases; Public Defender takes all other case types (these two programs existed before, but data was reported under only one institutional provider in previous reports)
 - Allegany-Cattaraugus Legal Aid added for Family Court cases.
 - Fulton Rural Law Center added for Family Court Appeals.
 - Yates County Conflict Defender abolished as of March 31, 2020 (still included as a provider in this report since the office was open for the first three months of 2020)
- 2021
- Conflict Defender in Essex County added.
 - Fulton Rural Law Center added for criminal appeals again.
 - Yates County Conflict Defender no longer included as a provider in this report (see above).
 - Madison County contract Public Defender discontinued

Figure 1: Providers of Mandated Representation by Year, Excluding Family Court-Only Providers and Hurrell-Harring Settlement County Providers.



This year, ILS was able to obtain complete caseload, staffing, and expenditure data from 131 providers in the state (see Appendix A and B), and we substituted in 2020 numbers for two additional providers.²⁸ As in previous years, ILS needed to substitute in data from the most recent prior year available for providers that had incomplete or provided no data to create a more complete dataset for analysis.²⁹

In the analysis section that follows, we present data on the caseloads, staffing, and expenditures of providers of defense across New York, distinguishing institutional providers, ACPs, and non-*Hurrell-Harring* counties outside New York City, and New York City data where appropriate and useful. We then present the two metrics previously discussed reflecting resource adequacy in defense providers: weighted cases per attorney in institutional providers (Figures 15 and 16) and spending per weighted case in Assigned Counsel Programs (Figure 17). It is by repeated assessment of the weighted cases per attorney (using the seven criminal case types and corresponding weights) that we measure the progress of ILS' new caseload standards implementation in institutional providers. For ACPs, we assess progress of caseload standards implementation by assessing average spending per weighted case, applying the seven case types and their corresponding weights reflected in ILS' caseload standards.

²⁸ Specifically, for the Otsego and Rensselaer County ACPs, we used 2020 caseload information, but 2021 expenditure numbers, obtained from the Annual Financial Reports submitted pursuant to County Law § 722-f(2).

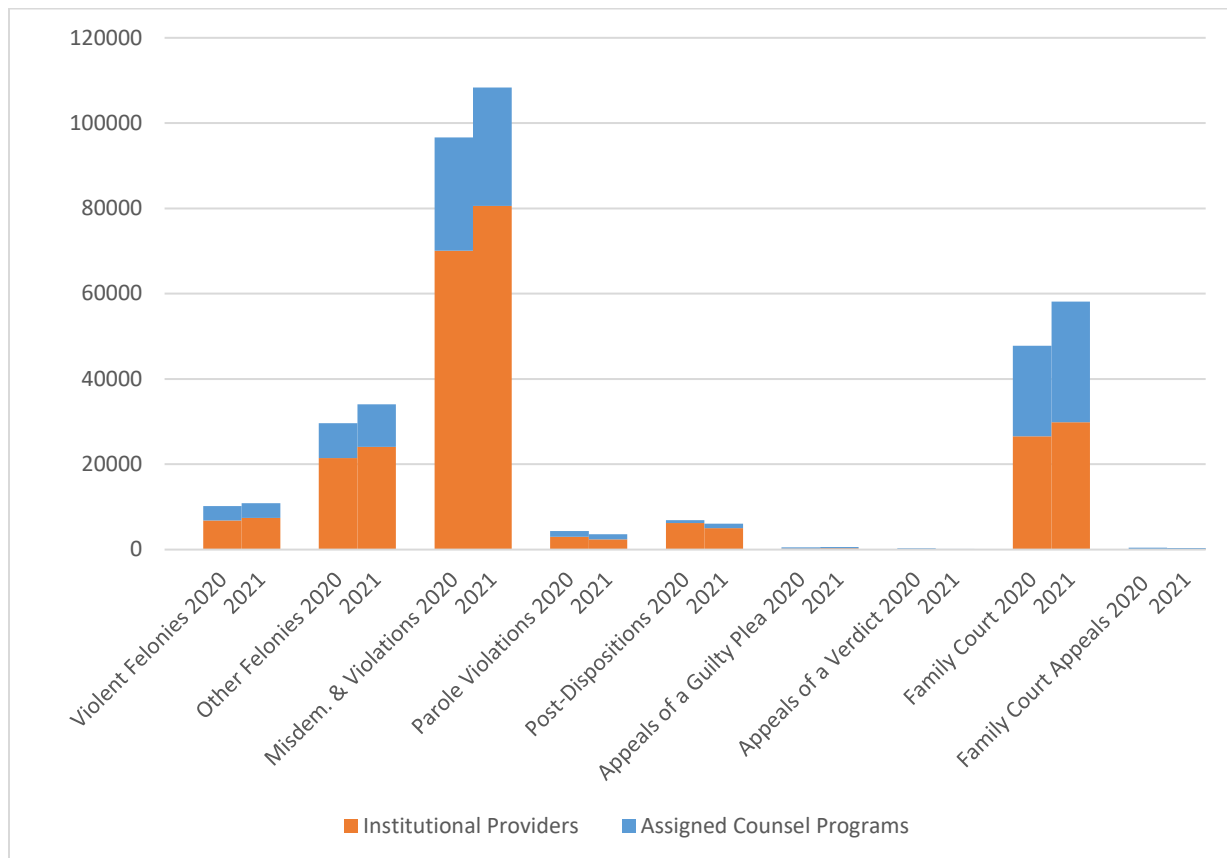
²⁹ There are a few exceptions to this rule. In 2012, five providers did not supply any data, and, having no prior years from which to substitute figures, those data are simply missing in our dataset. In 2015, similarly, the Yates County Conflict Defender was founded, but did not supply any data, and did not have any data from prior years we could use. Those values are also missing in our dataset. In 2020, four providers had missing data. That year, we decided not to substitute in data from the most recent prior year available because 2020 was an anomaly due to the onset of Covid-19.

A. Caseloads

Providers' 2020-2021 caseloads in the 52 non-Hurrell-Harring counties outside New York City: the new caseload categories

Figure 2 presents the sum of total caseloads for each of the seven criminal categories set forth in the ILS caseload standards (violent felonies; other felonies; misdemeanors and violations; parole violations; post-dispositions; appeals of a guilty plea; appeals of a verdict), and two Family Court categories (Family Court and Family Court appeals)³⁰ for all providers of mandated criminal representation in the 52 non-Hurrell-Harring counties outside New York City. Caseloads are broken down for institutional providers and ACPs separately. For a breakdown of the number of cases per case category handled by each such provider in 2021, please see Appendix A (for institutional providers) and Appendix B (for Assigned Counsel Programs).

Figure 2: Caseloads Handled by Providers of Criminal Representation in the 52 non-Hurrell-Harring Counties Outside New York City, 2020-2021 – Nine ILS Caseload Categories



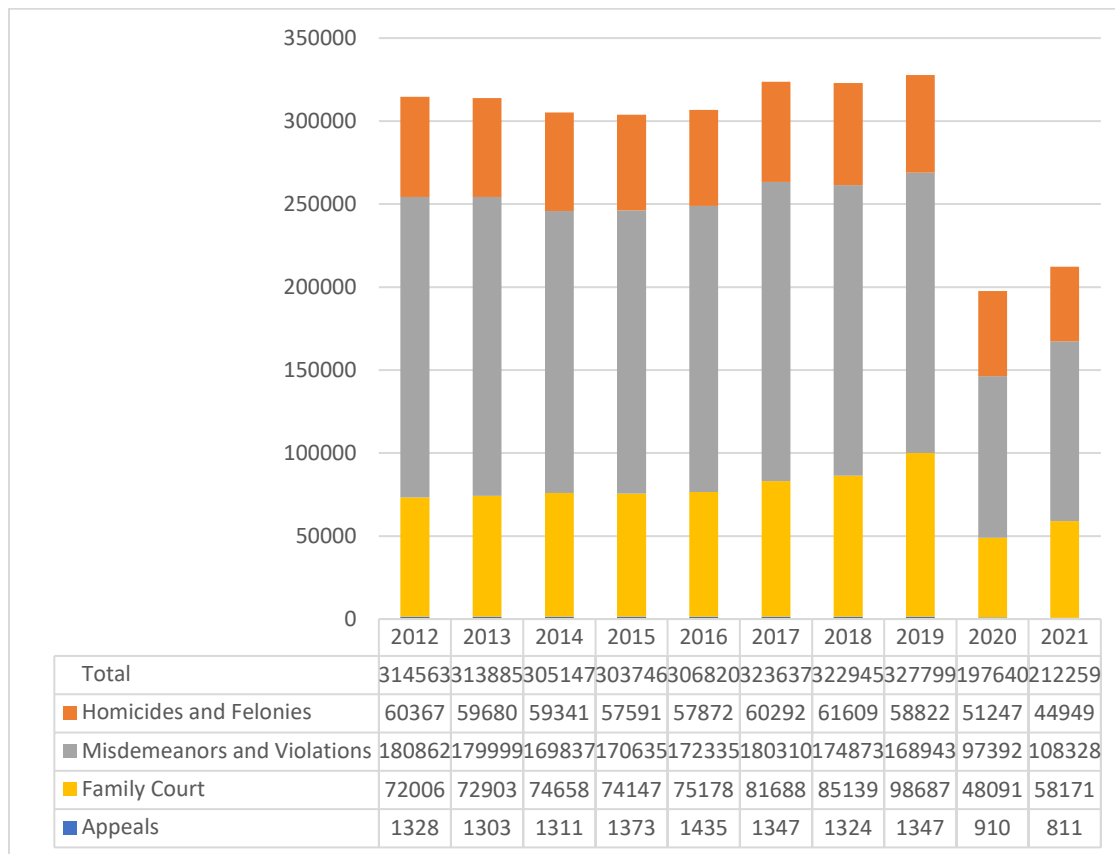
³⁰ Please note that at its June 2021 meeting, the ILS Board approved—contingent upon sufficient State funding—adoption of the ILS *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases*. These standards set forth 13 different case types for mandated Family Court representation, with most requiring more time on average per case type than currently contemplated by the revised NAC standards used in this report. Because approval of these standards is contingent upon available State funding, ILS has not yet required providers to report Family Court caseload data in accordance with these standards.

Providers' 2020-2021 caseloads in the 52 non-*Hurrell-Harring* counties outside New York City compared to previous years

Since 2012, ILS has collected data on providers' caseloads and monitored annual fluctuations in these caseloads. Over the years 2012-2019, the total caseload handled by all providers of mandated criminal representation in the 52 counties was fairly consistent (see Figure 3). However, because of the Covid-19 pandemic, we anticipated a significant decrease in the number of new cases handled in the year 2020 and into 2021. To get a rough idea of the magnitude of this decrease, we compare the 2020-2021 caseloads to the caseloads in the years before (2012-2019). Because the new caseload data was reported to ILS in accordance with the ILS caseload standards case categories, to compare the 2020-2021 caseloads to those of prior years, we had to convert the caseload numbers in the nine categories (i.e., seven criminal and two Family Court categories) to the five categories previously used. This conversion process is detailed in Appendix C.

Figure 3 presents the sum of total caseloads for two criminal categories (homicides and felonies; misdemeanors and violations), Family Court, and appeals for all providers of mandated criminal representation in the 52 non-*Hurrell-Harring* counties outside New York City. It includes the caseloads for both institutional providers and ACPs.

Figure 3: Total Caseloads Handled by Institutional Providers and Assigned Counsel Programs in 52 non-Hurrell-Harring Counties Outside New York City, 2012-2021



In the following two figures, the total caseloads for the two criminal categories, Family Court, and appeals are presented *separately* for institutional providers (Figure 4) and ACPs (Figure 5).

Figure 4: Total Caseloads Handled by Institutional Providers of Criminal Representation in the 52 non-Hurrell-Harring Counties Outside New York City, 2012-2021

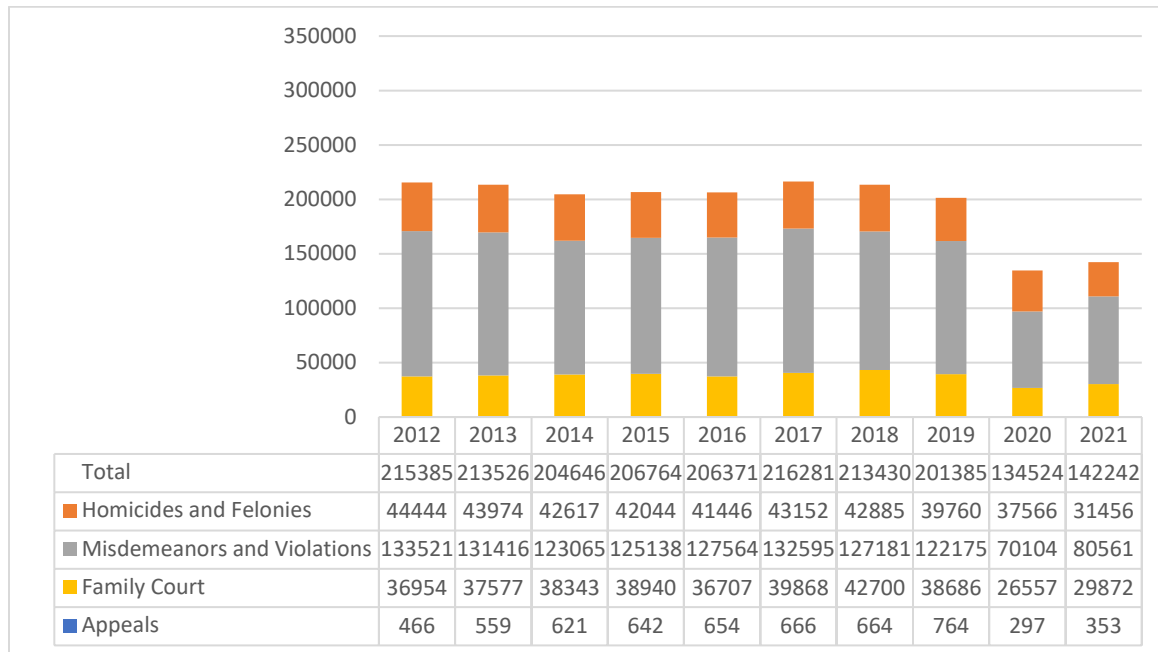
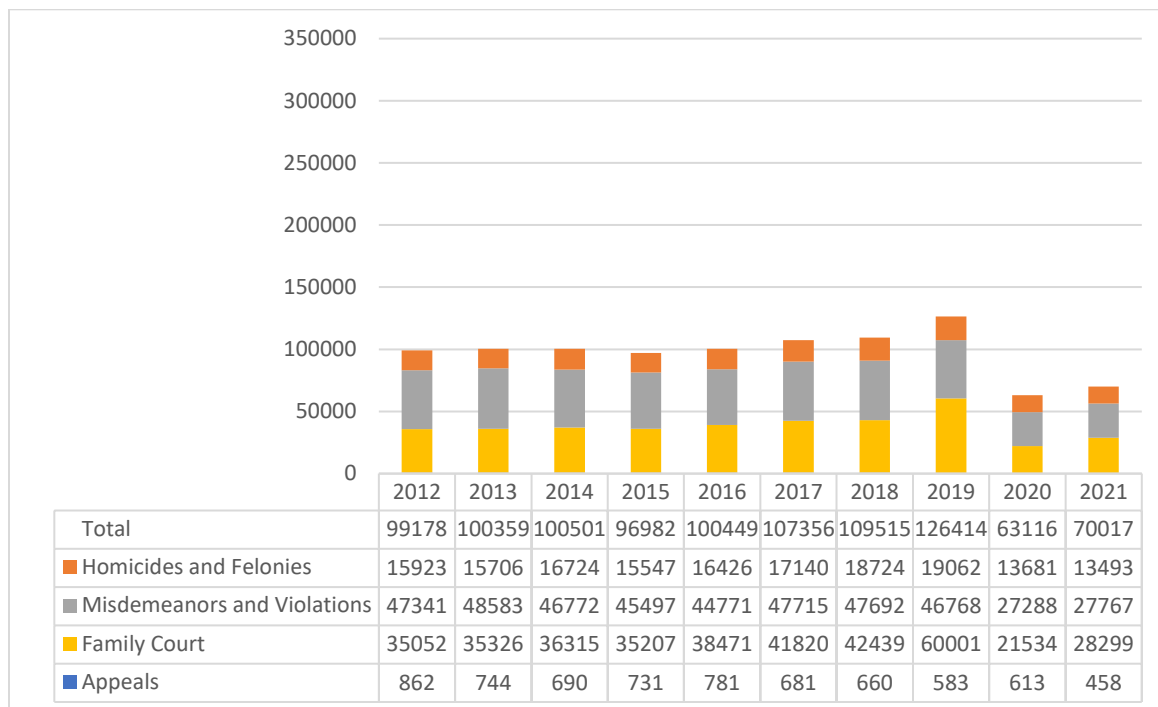


Figure 5: Total Caseloads Handled by Assigned Counsel Programs of Criminal Representation in the 52 non-Hurrell-Harring Counties Outside New York City, 2012-2021



Highlights of providers' caseloads in the 52 non-Hurrell-Harring counties outside New York City:

- As depicted in Figure 3, the total caseload (i.e., including the two criminal categories, Family Court, and appeals) handled by all providers of mandated criminal representation in the 52 non-Hurrell-Harring counties outside New York City was fairly consistent over the years 2012-2019.
- In 2020 and 2021, there was a significant decrease in the number of total cases compared to the year before the start of the Covid-19 pandemic, from 327,799 in 2019 to 197,640 in 2020 (a 39.7% decrease compared to 2019), to 212,259 cases in 2021 (a 35.2% decrease compared to 2019). However, from 2020 to 2021, the number of total cases increased by 7.4%. In last year's report, we speculated that the decrease in cases from 2019 was most likely attributable to the Covid-19 pandemic because stay-at-home orders and business closures drove down the number of arrests and court adjournments drove down new case assignments. In 2021, as businesses opened and stay-at-home orders relaxed, overall crime rates stayed relatively stable compared to 2020, though there was an increase in violent crime and motor vehicle theft³¹ that received much media attention, and with it the perception that crime overall has increased. With the relaxation of Covid-19 protocols in 2021, it is not a surprise that provider caseloads increased slightly. As we monitor caseloads over time, we will be better positioned to assess if provider caseloads continue to remain lower than in 2019, and if so, possible explanations other than the pandemic.³²
- In 2021, most of providers' caseloads consisted of misdemeanors and violations (51.0% of the total caseload), followed by Family Court cases (27.4%) and homicides and felonies (21.2%).³³ This ranking is different from the previous year: in 2020, misdemeanors and violations ranked first, homicides and felonies ranked second, and Family Court cases ranked third. Of all the trial level case types, Family Court trial level cases saw the largest percentage increase (21.8% increase compared to 6.5% for violent felonies, 15.0% for other felonies, and 12.1% for misdemeanors and violations, see Table 2 in Appendix D).
- When examining the caseloads separately for institutional providers (Figure 4) and ACPs (Figure 5), we see a decrease of 33.2% (2020) and 29.4% (2021) respectively in the number of total cases for institutional providers, and a decrease of 50.1% (2020) and 44.6% (2021) respectively for ACPs when comparing the total case numbers to the pre-

³¹ See data from the Division of Criminal Justice Services (DCJS), available here: [Criminal Justice Statistics - NY DCJS](#).

³² Possible other reasons include criminal legal system reform measures, such as the 2020 enactment of the Marijuana and Taxation Act (S854A/A1248A) which legalized the possession of marijuana for recreational use, and the 2019 enactment of the Drivers' License Reform Act, which limited the circumstances in which a person's driver's license could be suspended, thereby potentially diminishing the frequency of arrests for driving without a valid driver's license.

³³ Please note that there are eleven providers statewide that focus on Family Court representation exclusively. These providers and their caseload numbers are not included here as this report only includes providers of mandated criminal representation.

pandemic year 2019. However, from 2020 to 2021, the total number of cases ticked up, by 5.7% for institutional providers and 10.9% for ACPs.

- Like 2020, in 2021 ACPs again handled a substantially larger proportion of Family Court cases (40.4% or 28,299 cases) and appeals (0.7% or 458 cases) compared to institutional providers (21.0% or 29,872 Family Court cases versus 0.2% or 353 appeals).
- Like previous years, in 2021 roughly one third of the total volume of cases is handled by ACPs, and about two-thirds by institutional providers. Notably, every county must have an ACP to handle conflict cases; 47 of the 52 non-*Hurrell-Harring* counties outside New York City have one or more institutional providers.³⁴

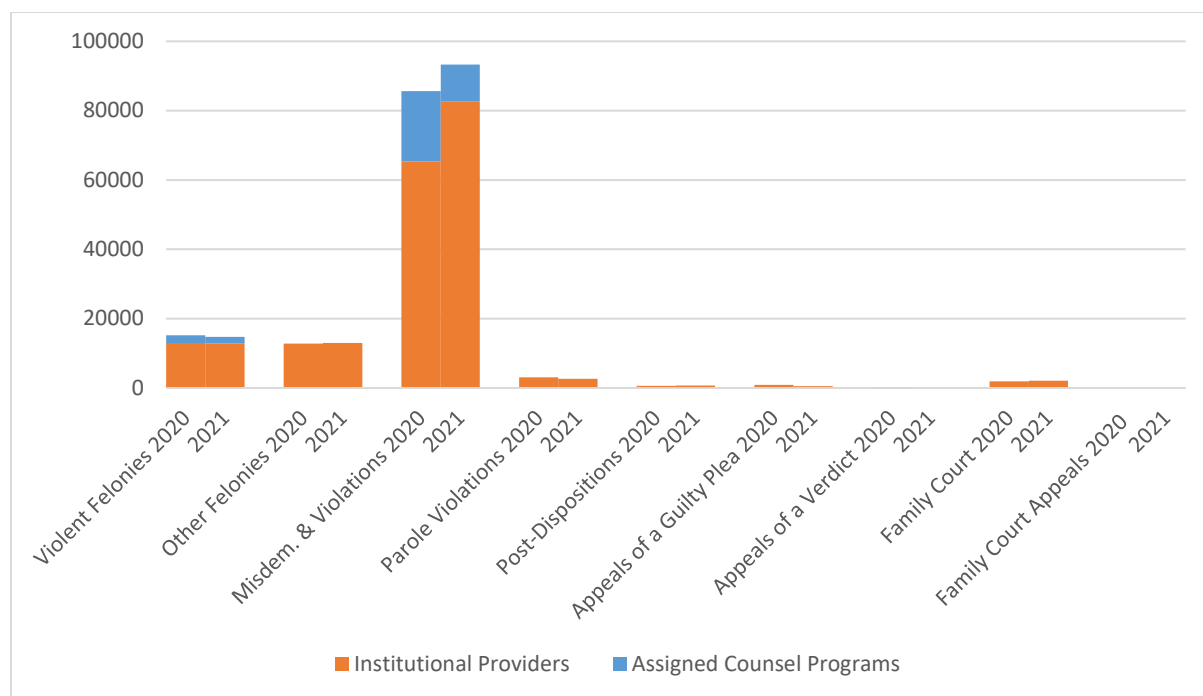
Providers' 2020-2021 caseloads in New York City: the new caseload categories

Figure 6 presents the sum of total caseloads for the seven ILS criminal categories (violent felonies; other felonies; misdemeanors and violations; parole violations; post-dispositions; appeals of a guilty plea; appeals of a verdict), and two Family Court categories (Family Court cases and Family Court appeals) for all providers of mandated criminal representation in New York City. It includes the caseloads for all providers that handle criminal cases, and for institutional providers and ACPs separately.³⁵ For a breakdown of the number of cases per case type handled by each New York City provider in 2021, please see Appendix A (for institutional providers) and Appendix B (for ACPs).

³⁴ Except for Cayuga, Herkimer, Oswego, Schoharie, and Tompkins County, which have an Assigned Counsel Program and no institutional providers.

³⁵ Please note that New York City has one institutional provider which focuses exclusively on Family Court representation as well as the Appellate Divisions which assign mandated Family Court cases to private attorneys. These providers and their caseloads are not included here as this report only includes providers of mandated criminal representation.

Figure 6: Total Caseloads Handled by Providers of Criminal Representation in New York City, 2020-2021 – Nine ILS Caseload Categories



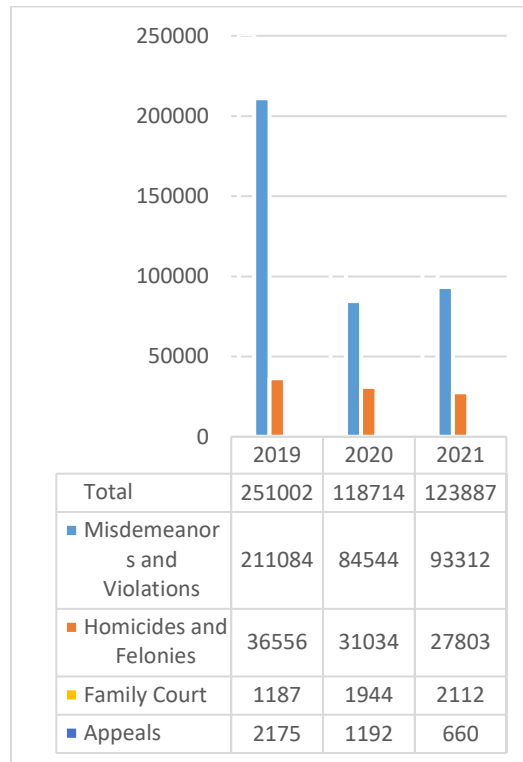
Please note that the database for the ACPs in New York City does not yet distinguish between violent felonies and other felonies. Since most of the ACP felony cases are violent felonies, all felonies in 2020 and 2021 are reported as violent felonies by these two ACPs (see Appendix D, Table 3 for more detail).

Providers' 2020-2021 caseloads in New York City compared to 2019

To compare the 2020 caseload numbers to 2019, the same conversion method was applied as described in Appendix C. This comparison gives a rough idea of the magnitude of the decrease in the number of cases during the Covid-19 pandemic.

The following three figures present caseload information for New York City for 2020-2021 compared to 2019. Figure 7 presents the sum of total caseloads for the two caseload categories (homicides and felonies; misdemeanors and violations) as well as for Family Court cases and appeals for all providers of mandated criminal representation. It includes the caseloads for both institutional providers and ACPs.

Figure 7: Total Caseloads Handled by Institutional Providers and Assigned Counsel Programs of Criminal Representation in New York City in 2019, 2020, and 2021



In Figure 8 and 9, the total caseloads in the two criminal categories, Family Court, and appeals are presented *separately* for institutional providers (Figure 8) and ACPs (Figure 9) in New York City.

Figure 8: Total Caseloads Handled by Institutional Providers of Criminal Representation in New York City in 2019, 2020, and 2021

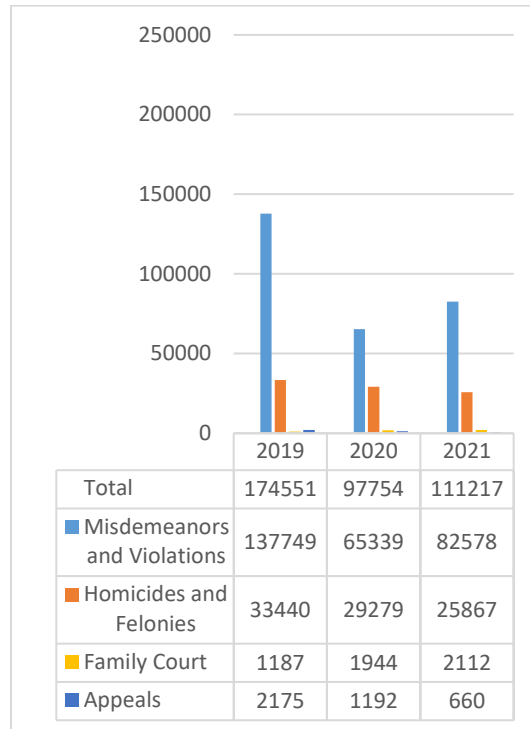
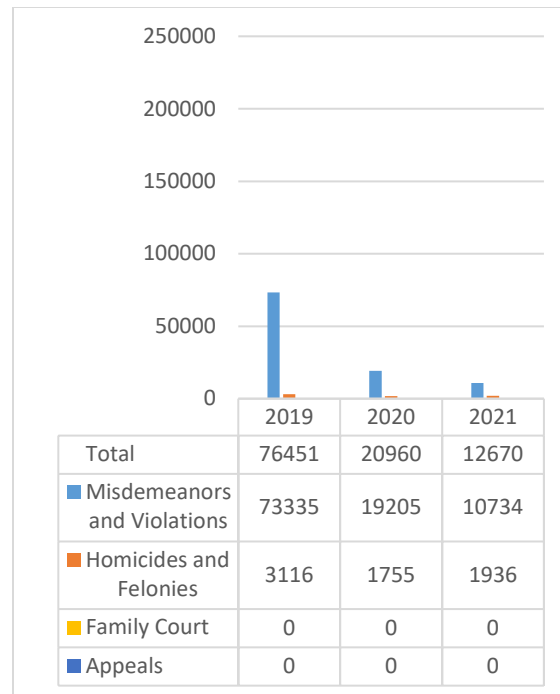


Figure 9: Total Caseloads Handled by Assigned Counsel Programs in New York City in 2019, 2020, and 2021



Highlights of providers' caseloads in 2019, 2020, and 2021 in New York City:

- From 2020 to 2021, there was a 4.4% increase in the number of total cases, from 118,714 in 2020 to 123,887 in 2021 cases for all New York City providers included in this report.
- When examining the caseloads separately for institutional providers (Figure 8) and ACPs (Figure 9), we see an increase in the total number of cases handled by the nine New York City institutional providers, from 97,754 to 111,217, which is an increase of 13.8%, whereas we see a decrease for the two ACPs, from 20,960 to 12,670, a decrease of 39.6%.
- In contrast to all other caseload categories, the number of Family Court cases increased from 1,187 in 2019 to 1,944 in 2020, an increase of 63.8%, and then again to 2,112 in 2021, an increase of another 8.6%. These Family Court cases are handled by institutional providers; the ACPs in New York City do not handle Family Court cases or appeals, as these cases are handled by assigned attorneys overseen by the 1st and 2nd Appellate Divisions.
- Most of providers' caseloads consist of misdemeanors and violations (74.7% of the total caseload for all providers in 2021), followed by the category homicides and felonies (22.3%).

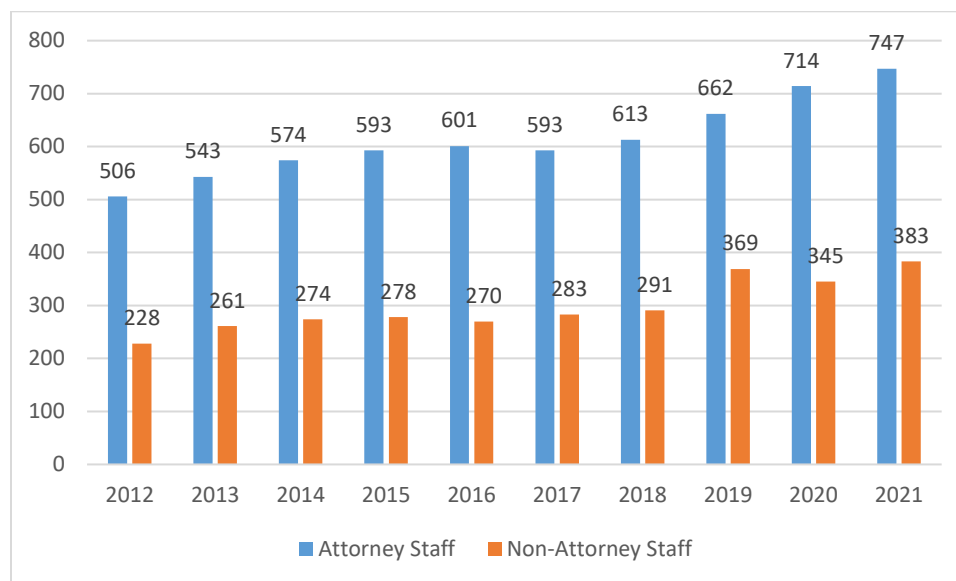
- In New York City, in 2021 89.8% of the total volume of cases is handled by its nine institutional providers that are included in this report³⁶ and 10.2% is handled by its two ACPs.

B. Staffing

Attorney and non-attorney staff in the 52 non-Hurrell-Harring counties and New York City

In addition to providers' caseloads, this report examines how many staff members are handling these cases. Figure 10 shows the number of FTE attorney and non-attorney staff for 2012 to 2021 for all institutional providers across the 52 counties.³⁷

Figure 10: Full-Time Equivalent Attorney and Non-Attorney Staff in Institutional Providers in the 52 non-Hurrell-Harring Counties Outside New York City.

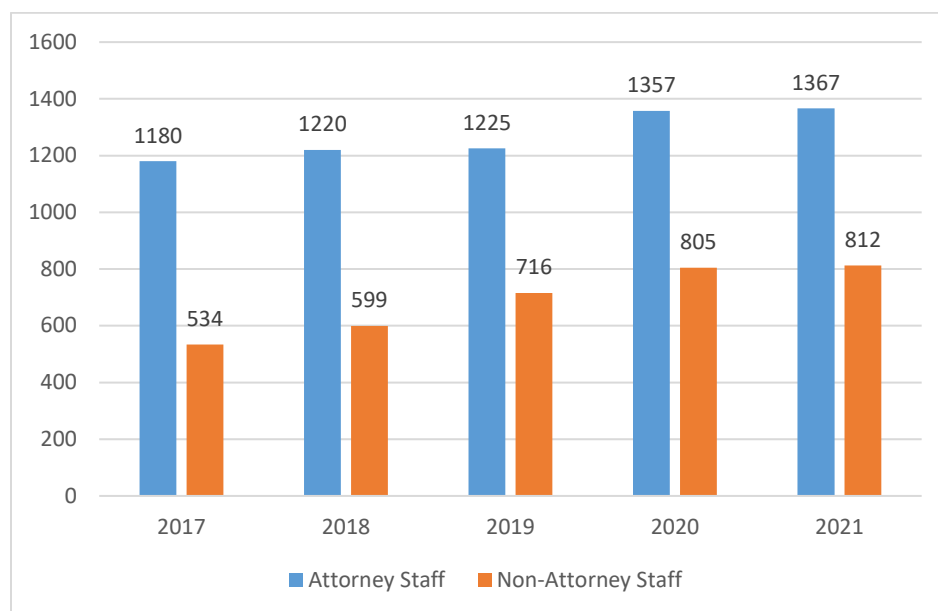


³⁶ Again, please note that New York City has other providers which focus on Family Court representation (as mentioned in the above footnote), and that these are not included in this report.

³⁷ Please note that Appendix A also includes attorney and non-attorney staffing numbers for 2021, but that these are different from the staffing numbers reported in Figure 10. Figure 10 reports the 2021 attorney and non-attorney staffing numbers (in FTE) for those representing or working on criminal *and* Family Court cases all added up together, whereas Appendix A solely focuses on the attorney and non-attorney staffing numbers (in FTE) *dedicated to criminal cases only*.

Figure 11 presents the same data for New York City, for which data are available as of 2017.

Figure 11: Full-Time Equivalent Attorney and Non-Attorney Staff in Institutional Providers in New York City.



Staffing highlights:

- The number of attorneys on staff at institutional providers in the 52 non-*Hurrell-Harring* counties outside New York City has increased substantially over time from 506 FTE attorneys in 2012 to 747 attorneys in 2021 (Figure 10). This is an increase of 47.6% over the past 10 years.
- Despite the Covid-19 pandemic-related hiring recruitment and attrition challenges described earlier in this report, the number of FTE attorneys on staff in the 52 non-*Hurrell-Harring* counties continued to increase in 2020, from 662 to 714, an increase of 7.9%, and again in 2021, from 714 to 747, an increase of 4.6%.
- Non-attorney staff similarly increased over time in the 52 non-*Hurrell-Harring* counties, from 228 FTE non-attorneys in 2012 to 383 in 2021, an increase of 68.0% (Figure 10). During the first year of the pandemic (2020) the number of non-attorneys slightly decreased from 369 to 345 but ticked back up to 383 in 2021.
- For New York City, the number of FTE attorneys has increased from 1180 in 2017 to 1367 in 2021, an increase of 15.8% (Figure 11). The number of FTE non-attorneys has increased significantly from 534 in 2017 to 812 in 2021, an increase of 52.1% (Figure 11).

- For all mandated providers, the pandemic and its lingering impact has curbed the increase in staffing, as providers continue to recruit and post for the new positions created with Statewide funding and fill positions that are vacant because of attrition. Of note, in 2021 this problem seems to have impacted New York City providers more significantly than non-New York City providers, as the New York City providers realized a smaller increase in attorney and non-attorney positions than their counterparts outside of New York City.

C. Expenditures

Expenditures in the 52 non-Hurrell-Harring counties and New York City

In addition to assessing providers' caseload and staffing numbers, this report also looks at providers' expenditures. All the expenditures presented in the following figures include: 1) expenditures on personnel services (i.e., salaries, wages, and fringe benefits for attorneys, investigators, social workers and other staff members employed by the provider); and 2) expenditures on all other than personnel services, which include both contract services (i.e., expenditures for attorneys and non-attorney professionals *not* employed by but *on contract with* the provider), and any other expenditures attendant to mandated representation (rent, equipment, supplies, etc.). These figures are for all expenditures, regardless of revenue source, and thus reflect a combination of funding from both state and local sources. Figure 12 presents the total spending for institutional providers and ACPs in the 57 counties outside New York City, thus *including* the *Hurrell-Harring* settlement counties. The spending figures in Figure 12 also include spending for providers that exclusively engage in Family Court representation.

Figure 12: Total Spending by Institutional Providers and Assigned Counsel Programs, 57 Counties Outside New York City, 2012-2021

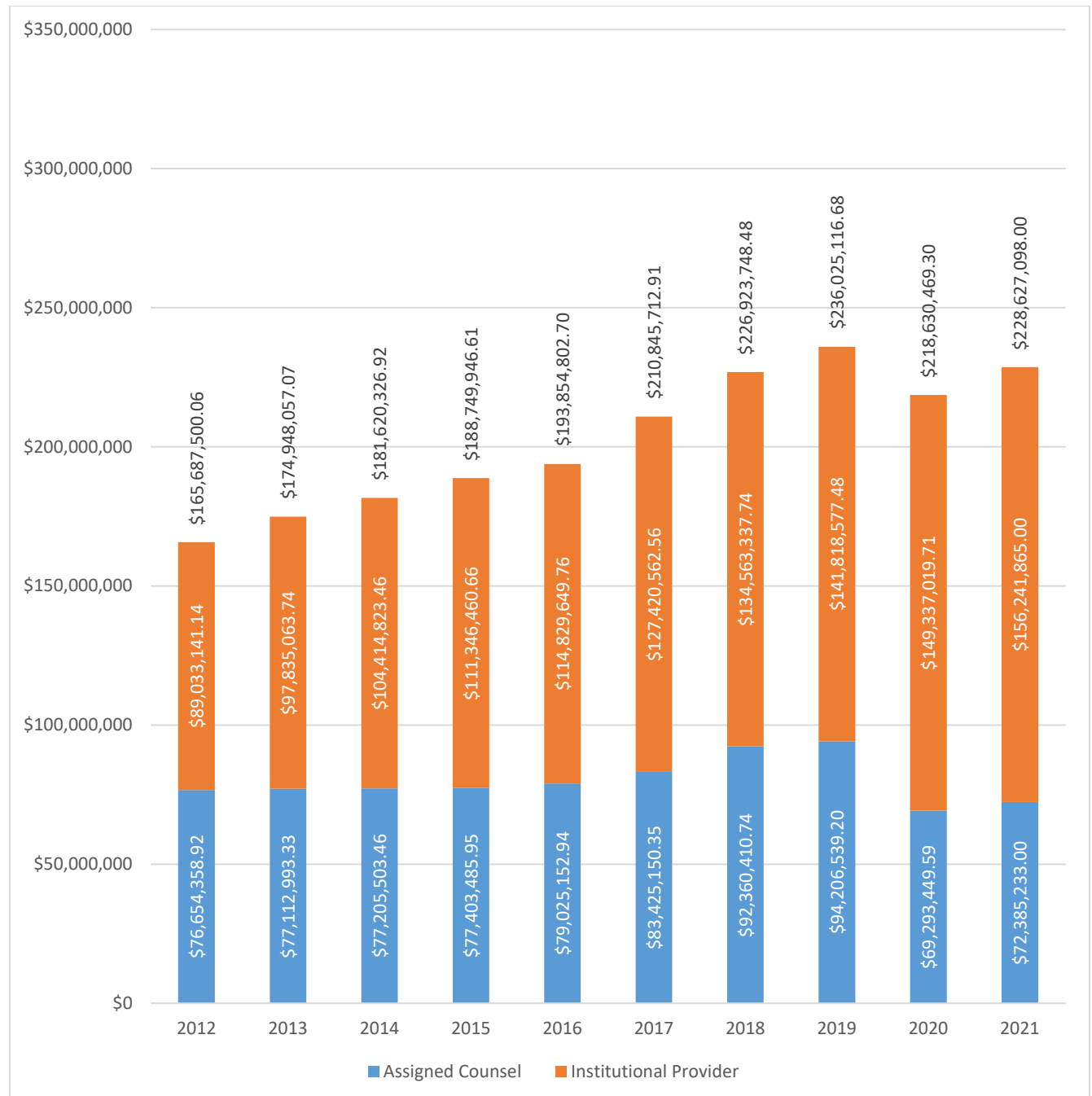


Figure 13 presents the total spending in the 52 non-*Hurrell-Harring* counties outside New York City for institutional providers and ACPs from 2017 to 2021;³⁸ Figure 14 does the same for New York City.

Figure 13: Total Spending by Institutional Providers and Assigned Counsel Programs in the 52 non-*Hurrell-Harring* Counties Outside New York City, 2017-2021

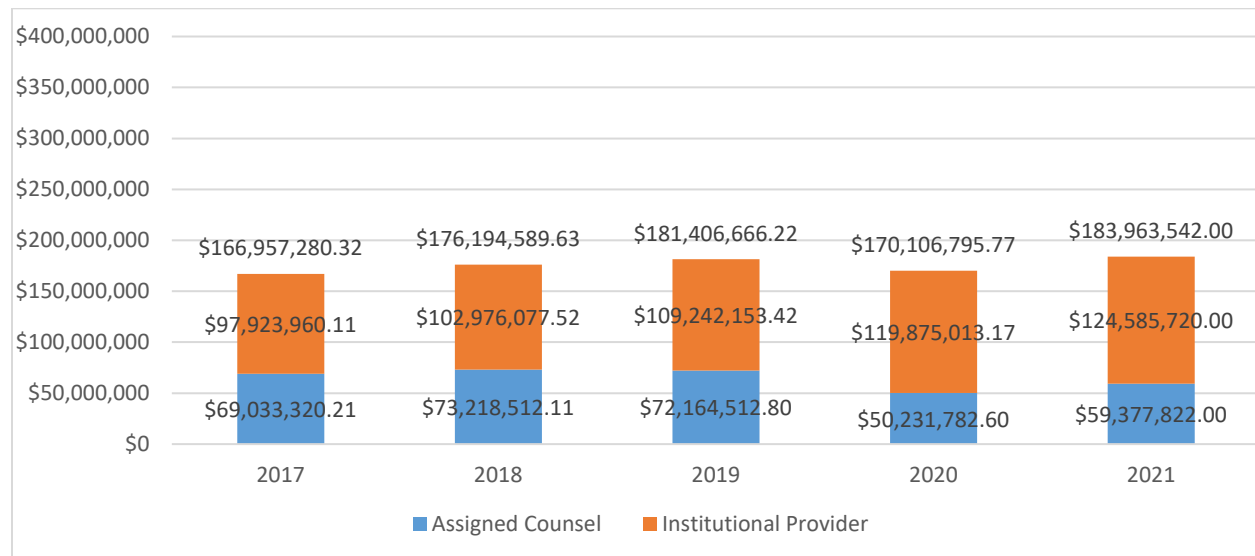
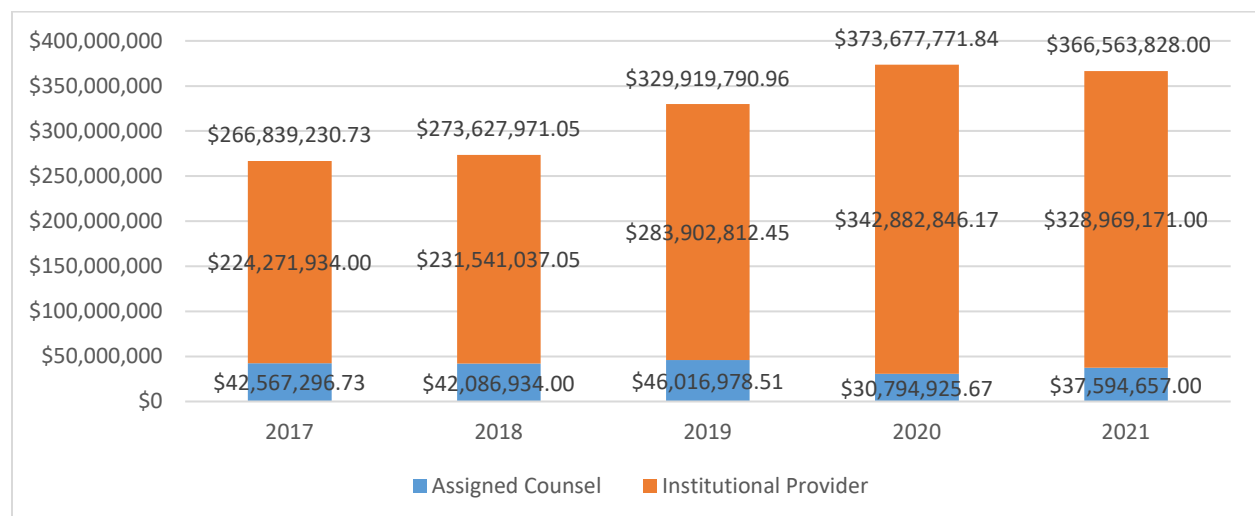


Figure 14: Total Spending by Institutional Providers and Assigned Counsel Programs in New York City, 2017-2021



³⁸ Excluding the *Hurrell-Harring* counties and those exclusively providing Family Court representation.

Expenditures highlights:

- Total spending in the 57 counties outside New York City, including the *Hurrell-Harring* settlement counties and providers exclusively engaging in Family Court representation, consistently increased from 2012 to 2019 for both institutional providers and ACPs (Figure 12). For the institutional providers, this increase continued in 2020, the first year of the Covid-19 pandemic. In contrast, for ACPs, the total spending decreased in 2020.
- In 2021, the second year of the pandemic, total spending in the 57 counties outside New York City further increased for both institutional providers and ACPs. For institutional providers, total spending increased from about \$149.3 million in 2020 to about \$156.2 million in 2021, an increase of 6.9%. For ACPs, total spending increased from about \$69.3 million in 2020 to about \$72.4 million in 2021, an increase of 4.5%.
- Total spending in the 52 non-*Hurrell-Harring* counties outside New York City consistently increased from about \$167 million for all providers in 2017, to about \$181.4 million in 2019 (Figure 13). In 2020, total spending decreased to about \$170.1 million. When examining institutional providers and ACPs separately, we see a similar pattern. For the institutional providers, the increase continued in 2020, the first year of the Covid-19 pandemic. In contrast, for ACPs, the total spending decreased.
- In 2021, the second year of the pandemic, total spending in the 52 non-*Hurrell-Harring* counties outside New York increased again to almost \$184.0 million, an increase of 8.2% compared to the year prior. For institutional providers, total spending increased from about \$119.9 million in 2020 to about \$124.6 in 2021, an increase of 4.7%. For ACPs total spending increased from \$50.2 million in 2020 to \$59.4 million in 2021, an increase of 18.3%.
- Total spending in New York City increased substantially from about \$267 million for all providers in 2017 to almost \$373.7 million in 2020 (Figure 14). Yet again we see that from 2019 to 2020, the total spending for institutional providers continued to increase, whereas for ACPs it decreased.
- In 2021, total spending in New York City decreased when examining all providers together. However, when examining institutional providers and ACPs separately, we see that total spending *decreased* for institutional providers from \$342.9 million in 2020 to \$329.0 in 2021, a decrease of 4.1%, while it *increased* for ACPs, from \$30.8 million in 2020 to \$37.6 million in 2021, an increase of 22.1%.

The decrease in ACP expenditures in 2020, compared to the marked increase in institutional provider expenditures, is driven by the sharp reduction in caseloads the ACPs experienced in 2020 as compared to 2019. (See Figure 5 and Figure 9 above). Since ACP attorneys are paid per case (unlike the institutional providers), the decrease in the number of cases impacted ACP expenditures. Relatedly, the slow-down in case processing also impacted assigned attorney billing. Assigned counsel attorneys are paid for the hours they work and subsequently bill.

During the Covid-19 pandemic, assigned counsel attorneys worked fewer hours due not only to the decrease in case assignments, but also because of the limitations in court functioning and the barriers to in-person contact with their clients. Moreover, because of these court limitations, cases were not resolved, delaying attorney submission of vouchers since attorneys commonly are not permitted to submit a voucher until after the case is resolved. As a result of the foregoing, ACP attorneys were submitting far fewer vouchers for payment, and even if permitted to voucher prior to a case being resolved (commonly called “interim voucher”), they were vouchering for fewer hours.

In 2021, total spending in the 52 non-*Hurrell-Harring* counties outside New York City is back up again to pre-pandemic levels, roughly \$184.0 million in 2021 versus \$181.4 million in 2019. However, a larger portion of the total spending in 2021 is attributed to institutional providers and a smaller portion to ACPs compared to 2019. In other words, ACP expenditures are still significantly lower compared to 2019, before the start of the pandemic, whereas institutional providers’ expenditures have consistently continued to increase. As stated earlier, the Covid-19 pandemic impacted ACP expenditures differently than those of institutional providers, and it is likely that the ongoing impact of the pandemic in 2021 continued to suppress ACP spending. Moreover, ACPs handled a substantially larger proportion of Family Court cases compared to institutional providers in 2020 and 2021 (see *Highlights of providers’ caseloads in the 52 non-Hurrell-Harring counties outside New York City*). Statewide implementation focuses exclusively on the goal of increased quality time and resources spent on criminal cases. The lack of similar resources available for Family Court representation coupled with the substantially larger proportion of Family Court cases handled by ACPs is likely another explanation for the reduction in ACP expenditures in the past two years.

Importantly, in New York City, total spending decreased for the first time since 2017 from \$373.7 million in 2020 to \$366.6 million in 2021. When examining institutional providers and ACPs separately, we see that this decrease is due to the decreased spending of institutional providers, as the New York City ACPs’ spending increased from 2020 to 2021. Part of this decrease is likely impacted by the recent attrition of criminal attorneys in the City: in 2020, the nine institutional providers in New York City reported a total of 1,264.30 criminal attorney FTEs, whereas in 2021, this was down to 1,242.28 FTE (see Appendix A), a difference of about 22 criminal attorney FTEs. Indeed, as stated earlier in this report, the New York City providers are experiencing very high attrition rates, fueled in large part by salary scales that are not competitive enough to keep attorneys. It appears that the problem could potentially worsen in 2022 if steps are not taken to ensure competitive wages for New York City’s defense community, and in fact, for the defense community statewide.³⁹

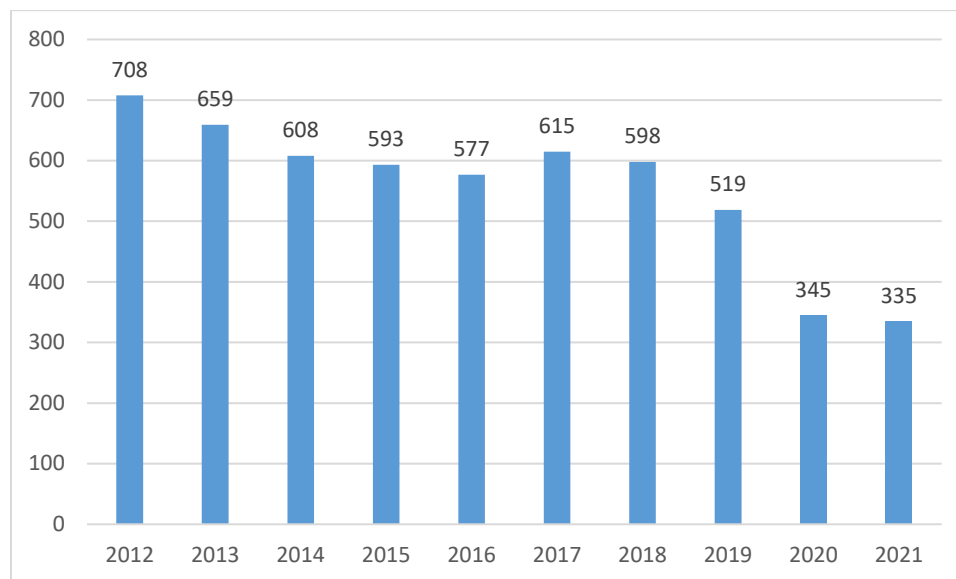
D. Institutional Providers: Weighted Cases Per Attorney

For institutional providers, as we have done in prior caseload reports, we look at progress towards caseload standard compliance by assessing the average number of weighted cases per

³⁹ See Jonah Bromwich, “Hundreds Have Left N.Y. Public Defender Offices Over Low Pay,” *The New York Times*, June 9, 2002 (noting that the attrition problem has worsened in 2022 for the New York City providers, and as defense attorneys for the New York City providers “leave for jobs where they can make competitive salaries,” even when they are otherwise committed about their defense work) available at: [Hundreds Have Left N.Y. Public Defender Offices Over Low Pay - The New York Times \(nytimes.com\)](https://www.nytimes.com/2002/06/09/nyspecial/hundreds-have-left-n-y-public-defender-offices-over-low-pay.html).

attorney. Figure 15 shows the average number of weighted cases per attorney in the 52 non-*Hurrell-Harring* counties outside New York City for the years 2012 to 2021. The term “weighted cases” refers to an adjustment that is applied to the caseload numbers of individual providers. For this figure and to best assess caseload trends over time, caseloads are weighted based on the NAC standards as follows: misdemeanors and violations are weighted at “1,” felony cases are weighted at “2.67,” Family Court trial cases are also weighted at “2.67,” and appeals are weighted at “16.”

Figure 15: Weighted Cases Per Attorney in Institutional Providers in the 52 non-*Hurrell-Harring* Counties Outside New York City, 2012-2021



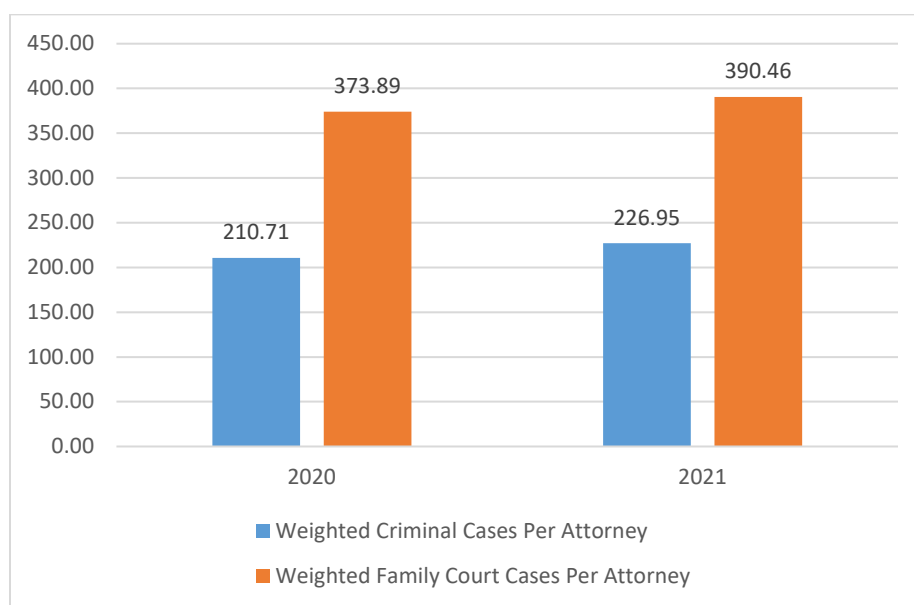
For institutional providers in the 52 non-*Hurrell-Harring* counties outside New York City, the weighted caseloads per attorney were generally decreasing from 2012 to 2016, though in 2017 they increased again. They decreased in 2018 and even more significantly in 2019, with 598 weighted cases per attorney in 2018 to 519 in 2019 (Figure 15). This suggests substantial caseload relief for attorneys in the 52 non-*Hurrell-Harring* counties since Statewide implementation. Given the pandemic-related reduction in caseloads since 2019 and the continued hiring of new attorneys as result of Statewide implementation (albeit at a slower pace than hoped given ongoing challenges of hiring) the more significant decrease in weighted caseloads per attorney in 2020 (345) and 2021 (335) is not a surprise.

Though a good measure of trends in weighted caseloads per attorney over time, Figure 15 has its limitations: first, it combines criminal and Family Court cases; second, it uses the previous NAC case types and case weights as opposed to the more recent and refined ILS caseload standards; and third, it does not include New York City institutional providers. In 2020, ILS began collecting data from all mandated criminal defense providers (including New York City) for criminal cases in a manner that accords with the ILS caseload standards. Under the ILS caseload standards, misdemeanors and violations are weighted at “1,” violent felonies are weighted at “6,”

other felonies at “3,” post-disposition and parole violation cases are both weighted at “1.5,” appeals of a guilty plea are weighted at “8.57,” and appeals of a verdict at “25.” We also began collecting data separately on Family Court cases using the same NAC standards and weights as previously used—i.e., Family Court trial cases are weighted at 2.67 and appeals at 16. Going forward, ILS anticipates continuing to use this more refined and inclusive method of assessing weighted cases per attorney

When we depict the weighted cases per attorney using this more refined and complete data set, the results are striking, as set forth in Figure 16 below.

Figure 16: Weighted Cases Per Attorney in Institutional Providers in the 52 non-Hurrell-Harring Counties and New York City, 2020-2021



With these new caseload categories and weights, in 2020 the overall number of weighted criminal cases per attorney in the 52 non-Hurrell-Harring counties and New York City institutional providers is 210.71, while in 2021 it ticked up slightly to 226.95.⁴⁰ For a breakdown of the 2021 average number of weighted criminal cases per attorney at the institutional provider level, please see Appendix A. Notably, Figure 16 depicts a stark difference between weighted Family Court cases per attorney and weighted criminal cases per attorney, with Family Court defense attorneys having to contend with much higher caseloads in both 2020 and 2021. The data shows 373.89 weighted Family Court cases per attorney in 2020 (163.18 weighted cases more, or 77.4% higher than criminal), and 390.46 weighted Family Court cases in 2021 (163.51 weighted cases more, or 72.0% higher than criminal).

⁴⁰ This number is calculated by dividing the sum of the total weighted criminal cases (i.e., column 14 in Appendix A) for each of the institutional providers in the 52 non-Hurrell-Harring counties and New York City by the sum of attorney staff taking criminal cases (in FTE; see column 12 in Appendix A) for these providers (i.e., 423,719.73 weighted *criminal* cases / 1,867.056 *criminal* attorney FTEs)

Weighted caseloads highlights:

- The number of weighted criminal cases per attorney went up slightly from 2020 to 2021, from 210.71 to 226.95.⁴¹ There are two factors driving this uptick. First, as the pandemic-related restrictions relaxed and courts gradually began to increase case processing, there was an increase in the number of new case assignments (see Figures 2 through 7). Second, many providers experienced staff attrition in 2021, for the reasons discussed earlier in this report. More than one-third, or 29 of the 80 institutional providers in the 52 non-*Hurrell-Harring* counties and New York City⁴² lost attorneys in 2021 as compared to 2020. For 24 of these providers, this loss of attorney staff resulted in a higher total weighted criminal caseload in 2021 compared to 2020. In addition, because of the increase in caseloads in 2021, some providers (20) that did not lose attorneys or otherwise gained attorney staff experienced higher weighted criminal caseloads in 2021.
- Statewide implementation has focused funding and resources exclusively on criminal court representation. Mandated Family Court representation has not had the same commitment of State funding, and as a result, continues to suffer high weighted caseloads per attorney. Importantly, the extent of the caseload crisis is not fully conveyed in the above figure since ILS had to use the outdated NAC standards in calculating the weighted Family Court caseload per attorney. Had ILS been able to calculate weighted Family Court caseloads per attorney using the ILS better informed Family Court caseload standards,⁴³ it is likely the weighted Family Court caseloads per attorney would be much higher.

The overall increase in criminal practice attorney staff from 2018, when Statewide implementation began, through 2020 (see Figures 10 and 11), made the providers more resilient to the increase in criminal caseloads between 2020 and 2021, ensuring that the weighted criminal cases per attorney did not increase even more despite the fact that many providers had a decrease in attorney staff between 2020 and 2021 as a result of the recruitment and attrition discussed earlier in this report. Because of these recruitment and attrition challenges, many providers have unfilled positions. Had providers been able to fill these positions, the weighted criminal caseload per attorney would almost certainly have gone down in 2021.

⁴¹ In calculating these weighted numbers, the seven new ILS criminal caseload categories and corresponding weights were used for the first time. In contrast to previous years, these weighted numbers **only include criminal**, and not Family Court cases. Therefore, these numbers are not directly comparable to the weighted caseloads per attorney in previous years.

⁴² For 71 out of the 74 institutional providers in the 52 non-*Hurrell-Harring* counties outside New York City, ILS received complete data on criminal attorney FTEs and total weighted criminal cases in 2020 and 2021; data was incomplete or missing for 3 out of the 74. In addition, ILS received complete data for all 9 institutional providers in New York City.

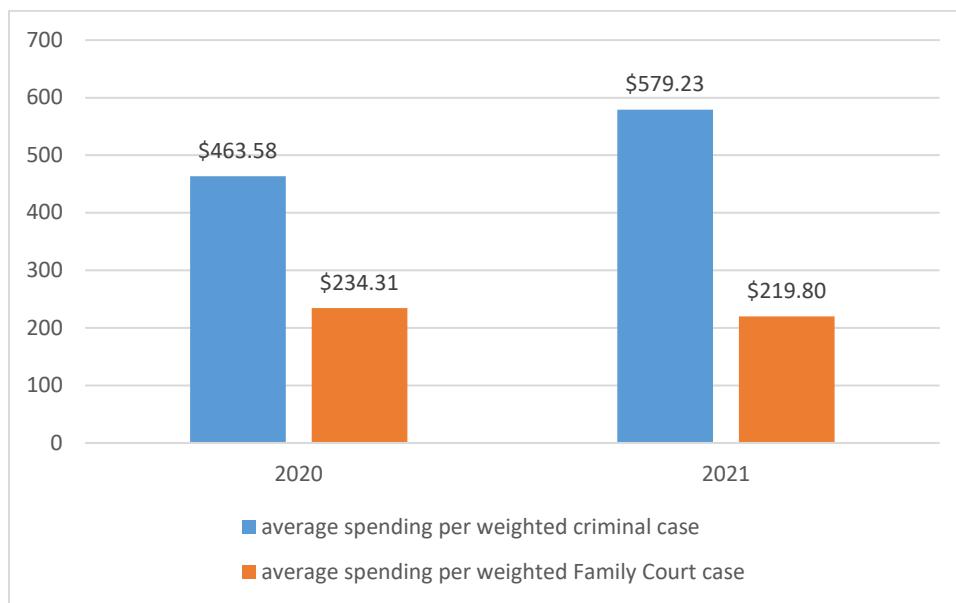
⁴³ As noted in footnote 30 of this report, at its June 2021 meeting, the ILS Board approved—contingent upon sufficient State funding—adoption of the ILS *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases*. These standards are available here: [Caseload Standards Parents Attorneys NYS Family Court.pdf](#).

E. Assigned Counsel Programs: Average Spending Per Weighted Case

While we use the metrics of average weighted case per attorney for institutional providers, for ACPs we use a different approach—one that reflects how ACPs are organizationally distinct from institutional providers. For ACPs we present the average spending per weighted case using the case weights in accord with the ILS caseload standards: misdemeanor and violation cases weighted “1,” violent felonies “6,” other felonies “3,” post-disposition and parole violation “1.5,” appeals of a guilty plea “8.57,” and appeals of a trial verdict “25.” Family Court cases were weighted at “2.67” and Family Court appeals at “16.”⁴⁴ For a breakdown of the 2021 average spending per weighted criminal case per ILS caseload standard weights and per weighted Family Court case, at the ACP level, please see Appendix E.⁴⁵

This assessment reveals the following: the 2021 average spending per weighted criminal case was \$579.23 while the average spending per weighted Family Court case was \$219.80. Compared to 2020, the average spending per weighted criminal case increased significantly while the average spending per weighted Family Court case *decreased* (see Figure 17).

Figure 17. Average Spending Per Weighted Criminal and Family Court Case in Assigned Counsel Programs in 52 non-Hurrell-Harring Counties and New York City, 2020-2021



⁴⁴ As the purpose is to set a baseline for future reports, it would be inappropriate to not consider and weigh Family Court appeals at all (as we did for comparing 2020-2021 case numbers to previous years as described in Appendix C). Therefore, Family Court cases are weighted at 2.67 and Family Court appeals at 16, which are the weights used for Family Court cases and appeals in previous caseload reports. Although ILS has published more refined caseload standards and corresponding weights in its June 4, 2021 report titled *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases*, these require the collection of data in seven Family Court case types at the trial level, which for the purposes of the current report has not been done. In addition, the more refined ILS caseload standards for Family Court cases do not include weights for Family Court appeals.

⁴⁵ Please note that in Appendix E, the more specific measure of *OTPS expenditures* is used for both criminal and Family Court cases. This is in contrast to Appendix B in which the overall *total expenditures* are presented.

Average spending per weighted case highlights:

- For ACPs in the 52 non-*Hurrell-Harring* counties and New York City, we set forth the average spending per weighted case using the ILS caseload standards case weights (which serves as the baseline since 2020).
- As a result of Statewide implementation, assigned counsel attorneys have more resources available to them to provide quality representation, as described in the Quality Improvement section of this report. The increase in average spending per criminal case between 2020 and 2021 demonstrates that assigned counsel attorneys are increasingly using these resources, and that the infrastructure described earlier is showing progress toward improving the quality of representation provided.

As with Figure 16 (average weighted caseload per attorney for institutional providers), Figure 17 reveals a stark distinction between expenditures on criminal cases versus expenditures on Family Court cases. In fact, this distinction became even greater in magnitude in 2021. Compared to 2020, the average spending per weighted criminal case increased (from \$464 to \$579) while the average spending per weighted Family Court case decreased (\$234 in 2020 and \$220 in 2021, see Figure 17). This shows that ACPs continue to spend, on average, significantly more per case on criminal cases than Family Court cases, highlighting the lack of State investment in mandated Family Court representation.

Conclusion

ILS has long acknowledged that public defense reform in a county-based system is fraught with challenges, even in the best of times.⁴⁶ Of course, the past two years has not been the best of times for mandated public defense providers, but instead has been one of significant and ongoing challenges posed by an unprecedented public health crisis, the need to adjust criminal defense practices to accommodate the reforms to New York’s criminal justice system, and more recently the crisis in recruitment and attrition that the public sector is facing on a national scale. Despite these challenges, this report provides qualitative and quantitative data and information showing that meaningful progress continues to be made in extending the *Hurrell-Harring* settlement initiatives to the entire state.

This report also shows the disparity between mandated criminal defense, for which there is a state fiscal commitment to improved quality, and mandated parental representation in Family Court matters, for which there is no such commitment. This disparity exists despite the fact that criminal defense and parental defense are equally mandated under County Law Article 18-B and of equal importance to ILS’ statutory mission.⁴⁷ There are different lenses through which to view

⁴⁶ See, e.g., William J. Leahy, “The Right to Counsel in the State of New York: How Reform Was Achieved After Decades of Failure,” *Indiana Law Review*, Vol. 51, No. 1 (2018), available at: [View of The Right to Counsel in the State of New York \(iupui.edu\)](https://www.indianalawreview.org/article/view/1000)

⁴⁷ See Executive Law § 832 (providing that the purpose of ILS “is to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law,” which includes criminal defense and parental defense in Family Court matters).

this disparity. Viewed through the criminal defense lens, it highlights the progress that can be made when there is a state fiscal commitment to improved quality—attorney caseloads are lower, spending per case is higher, and a quality improvement infrastructure is built to ensure that this progress towards caseload relief translates to meaningful improvement in the quality of representation provided to low-income people facing criminal prosecution. However, when viewed through the parental representation lens, this disparity highlights what happens when there is no such state commitment—defense attorneys continue to work under increasingly high caseloads with insufficient resources, and low-income parents in crisis do not receive quality representation.

Within this context, ILS will continue to work with county officials and providers of mandated representation to continue to the progress that has been made with Statewide funding for improved mandated criminal defense, while we simultaneously continue our efforts to obtain the state funding needed for improved quality mandated parental defense.