

# Definitions for Reporting Counts of Criminal Cases to the Office of Indigent Legal Services

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## Introduction

The Office of Indigent Legal Services (ILS) must collect caseload data from providers of representation to fulfil its mandate to implement caseload standards across the state. These definitions are issued to assist providers of criminal representation in reporting caseloads to ILS in an accurate and consistent manner. They make clear when cases should and should not be counted and facilitate the implementation of the caseload standards issued by ILS in December 2016. Definitions for cases in family court are not included.

The establishment of these rules sets the stage for an important aspect of ILS' work to implement caseload standards by 2023: the reconciliation of diverse data recording procedures into consistent, like-with-like, data across the state to facilitate the appropriate allocation of needed resources. We also recognize, however, that many providers already have counting procedures in place which may serve important purposes including local reporting and accountability requirements, contractual requirements, data sharing requirements, or simple administrative parsimony. Definitions and counting practices can and should differ depending on circumstances, even to the point that individual providers might legitimately maintain separate counts, reflecting separate totals, of the same caseloads, simultaneously. Nothing about these standards should be construed to mean that the manner of counting laid out herein is more 'correct' than any other, therefore. While ILS must require that providers report data according to certain uniform rules as part of its responsibilities under caseload standards implementation, these definitions should not inhibit providers from continuing to record, analyze and report data in ways that are appropriate for different audiences, circumstances and requirements. Additionally, nothing in these standards should be taken to contradict the rules of confidentiality pursuant to the *Hurrell-Harring* settlement, the *ILS Criteria and Procedures for Determining Assigned Counsel Eligibility*, or the rules of professional conduct, which apply regardless of whether a case is opened or counted by a provider.

When devising the reporting rules that follow we relied heavily on research we conducted in 2017 about existing conventions around the state for counting cases. The findings of that research can be found in ILS' 2018 *Study of Case Counting Practices*. Where existing practices were already close to consensus we tried to follow those conventions. Where existing practices were not at consensus we tried to create definitions that could feasibly be implemented with the minimum amount of reorganization of administrative procedures. At the same time, we also sought to be guided by normative understandings of appropriate and logical decisions where necessary, to avoid making decisions for administrative convenience only. Above all, we tried scrupulously to avoid creating demands for information on providers with which it would literally be impossible to comply.

ILS is committed to working cooperatively and supportively with counties and providers of representation as they seek to implement procedures that will allow them to report case counts that comply with these definitions.

## Definitions Reporting Counts of Criminal Cases to the Office of Indigent Legal Services

### Terms:

**Provider.** A provider is a person or entity that provides legal advice and/or representation to clients in criminal cases pursuant to New York County Law §722.

**Client.** A client is a person who receives legal advice and/or representation from a provider in relation to a criminal case.

**Case.** A case is a criminal legal matter as defined in the caseload standards issued by ILS, and under 'Types of case' below.

### Types of case:

**A new trial case is one or more charge(s) against a single individual arising in a single court and contained in a single charging instrument, except where several such instruments refer to a single alleged incident.** Where charges listed on several charging instruments relate to a single alleged incident and are prosecuted together in a single court, they should be counted as a single case. Where those instruments result in separate prosecutions in separate courts, they should be counted as separate cases. Transfers to county court from local courts for felony prosecution should not be counted as new cases. Lower level charges within individual charging instruments should not be counted as separate cases. Where a series of related offenses occurring in different places over time are charged on separate charging instruments or are arraigned in different courts, these should be counted as separate cases. Where a single accusatory instrument, including a sealed indictment, alleges a number of offenses taking place on different days in different places, this is counted as one case because it originates in one court and one charging instrument.

**An appellate case is defined as a single appeal in a single appellate court.**

**A parole violation case is a case in which a single client is accused of violating conditions of parole.**

**Post-disposition cases are defined as follows:** (Note that if the provider is simultaneously assigned to represent a client with a post-disposition case due to an accusation of new criminal conduct, such accusations should be counted as separate, additional, trial case(s), in accordance with the definition above.)

- **A client is alleged to have violated the conditions of his or her sentence.** This includes where a client is alleged to have violated a condition of a sentence of probation or conditional discharge, or to have failed to pay a fine.
- **A client faces a Sex Offender Registration Act (SORA) classification and designation proceeding.** SORA classification and designation proceedings may occur upon release from a prison sentence, or at the time of sentencing if the client is not facing a state prison sentence. In either case, representation of such a client should be counted as a

new post-disposition case. Petitions for relief or modification pursuant to Correction Law 168-o should also be so counted.

The beginning of a case:

**A case must be counted when an assignment has been made, or when legal advice and/or representation has been provided.** A case should not be counted if legal advice and/or representation are not provided, such as when the provider only screens a defendant for eligibility or a conflict of interest. Legal advice and/or representation may be provided in a case, and the case counted, notwithstanding that procedures for eligibility determination, conflict determination, or formal assignment of the case by a court to a provider has not taken place. A case does not necessarily imply the representation of a client from arraignment to disposition. A case may be quite brief if representation is provided but a conflict of interest is discovered, a finding of financial ineligibility is made by the court, or the client opts to retain counsel privately.

**A new case must be counted if an existing client is to be retried.**

**A new case must be counted whenever leave is granted to appeal to a higher court.** A direct appeal should be counted as a case; in the event such an appeal fails and leave is granted to appeal to a higher court, a new appellate case should be counted. Filing of a notice of appeal should not be counted as a new appellate case in the absence of an assignment to conduct appellate representation.

Special types of post-disposition case:

**The following types of post-disposition case may only be counted under certain circumstances.**

- **A motion under CPL Article 440.** This may be counted as a post-disposition case only if an attorney is appointed to represent a client to file or to consider filing such a motion, or if the attorney in fact files such a motion on behalf of a client notwithstanding that they have not been appointed.
- **A habeas corpus matter.** This may be counted as a post-disposition case only if an attorney is appointed to represent a client in such a matter.

Accuracy in tracking:

**Cases must be classified correctly into case types.** Trial cases must be categorized according to the top charge at the outset of the case, unless the case begins in local court as a misdemeanor but is subsequently prosecuted in superior court upon a felony indictment or superior court information, in which case it should be classified as a felony. If the client is charged with both felony and misdemeanor offenses, the case must be counted as a felony. If the case is later resolved as a misdemeanor, the case must still be counted as a felony because it opened as a felony. Parole, appellate and post-disposition cases must likewise be categorized appropriately.

**Every case must be counted individually.** Providers must track all new cases individually from the point at which representation begins. Providers may neither fail to count new cases, nor to count multiple cases for a single client, other than as provided in these definitions.

**A provider should only count and report its own cases.** If multiple providers are jointly administered by a single agency or person, cases must be counted correctly among the providers with the same definitions applied to each.

**Cases reassigned to a new provider, or a new attorney within an assigned counsel provider, must be counted separately by each provider subject to the definitions above.**

Reference periods for reporting:

When reporting caseload counts, providers should report counts of all newly opened cases across all categories specified in ILS' caseload standards for the time period requested (generally the previous year). Where providers are not informed of the opening of cases in a timely manner they may report counts of cases that closed during the time period requested. In this situation, the same definitions must be applied for the purpose of counting cases. This is of importance because it is common for more than one case against a single client to be disposed together – creating the appearance, at the point of closing, that only one case is being closed, whereas in fact multiple cases are being closed simultaneously. For providers reporting cases according to this rule, it is essential that the total number of cases being closed is recorded accurately in accordance with these definitions.