

Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2013 Update

A Report of the New York State Office of Indigent Legal Services
September, 2014.

*Estimate of the Cost of Compliance
with Maximum National Caseload Limits
in Upstate New York – 2013 Update*

Contents

Executive Summary 2

Introduction..... 3

Section I: Data..... 5

 How Many Cases Were Upstate Providers Handling in 2012 and 2013?..... 5

Figure 1: New Cases In Upstate Counties, 2012 and 2013 5

Figure 2: New Cases In Upstate Counties, 2012 and 2013, by Program Type 6

 How Many Staff Were Employed In Upstate Institutional Providers in 2012 and 2013? 7

Figure 3: Full-Time-Equivalent Attorney And Non-Attorney Staff In Institutional Providers, 2012 and 2013..... 7

 How Much Did Programs Spend In 2012 and 2013? 8

Figure 4: Expenditures In Indigent Legal Services Programs, Statewide by Program Type, 2012 and 2013..... 8

Section II: Analysis 9

 How Many Cases Were Attorneys Taking in Upstate Institutional Providers in 2012 and 2013? 9

Figure 5: Weighted Caseloads Per Attorney In Institutional Providers, 2012 and 2013 9

Figure 6: Distribution Of Weighted Caseloads Per Attorney In Institutional Providers, 2012 and 2013..... 9

 How Many Additional Staff Did Institutional Providers Need In 2012 and 2013? 10

Figure 7: New Staff Required In Institutional Providers, 2012 and 2013 10

 How Much Did Providers Spend Per Case in 2012 and 2013?..... 11

Figure 8: Provider Spending Per Weighted Case In 2012 and 2013..... 11

 How Many Hours Of Work Was Required To Handle Assigned Counsel Caseloads? 12

Figure 9: Attorney And Non-Attorney Hours Required For Assigned Counsel, 2012 and 2013 12

 How Much Additional Funding Was Required To Meet National Caseload Limits in 2012 and 2013? 13

Figure 10: Actual and Needed Spending Statewide, 2012 and 2013 13

Figure 11: Actual and Needed Spending in Providers, 2012 and 2013..... 14

Figure 12: Distribution of Needed Spending Increases, 2012 and 2013 15

Conclusion 16

*Estimate of the Cost of Compliance
with Maximum National Caseload Limits
in Upstate New York – 2013 Update*

Executive Summary

- In order to comply with maximum national caseload limits in 2013, New York would have had to spend an additional \$105,199,248 on indigent legal services in upstate counties. This amount represents a 5.4% decrease on the \$111,214,533 that would have been needed to bring upstate counties into compliance with caseload limits in 2012.
- \$64,909,219, or 62%, of the \$105,199,248, was needed in the 72 institutional providers of representation in upstate counties. This would have paid for 530 new staff attorneys in addition to the 701 employed in 2013. It would also have funded 294 new non-attorney staff in addition to the 335 who were already employed. Expenditures in these programs would have to increase by an average of 79%, as compared to 92% in 2012.
- \$40,147,792, or 38% of the \$105,199,248, would have been required to bring the 58 upstate assigned counsel programs into compliance with national standards. Expenditures in these programs would have had to increase by an average of 58%, as compared to 67% in 2012.
- In 2013, the 57 upstate counties of New York State spent \$174,948,057, largely from county funds, to provide legally mandated representation to indigent persons under NY County Law Article 18-B. This was an increase of over \$9 million, or 5.4%, on the \$165,934,692 spent in 2012.
- In the 72 institutional providers of indigent legal services operational in upstate New York in 2013, attorneys handled an average of 680 new weighted cases. This compares with an average total of 719 new weighted cases in 2012, or a reduction of 5.4%. Despite this modest improvement, the average weighted caseload for 2013 exceeds the maximum national caseload limit of 367 new weighted cases per attorney per year by 85%.
- The modest reduction in average new weighted caseloads is attributable in large part to an increase in staffing levels in upstate institutional provider offices of 47 attorneys and 38 support staff. Many of these additional positions were facilitated by the targeted funding of the Office of Indigent Legal Services.
- As with the 2012 estimate, this estimate is grounded on conservative assumptions with respect to both the caseload limits used, which have been criticized as excessively high, and the methods by which the caseloads, salaries and expenditures were quantified. Our purpose has been to provide an accurate and not overstated estimate of the cost of bringing New York's upstate counties into compliance with national caseload maxima.
- The findings of this report demonstrate that despite modest progress in 2013, upstate caseloads continue to exceed maximum national limits by an unconscionable margin; indeed they far exceed even the caseloads that existed in New York City in 2009, which caused the State of New York to provide funding to bring those caseloads into compliance with maximum national caseload limits.

Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2013 Update

This agreement is a major step toward ensuring quality of legal representation for those who cannot afford lawyers. This historic legislation lays the groundwork for achieving that vitally important goal throughout the state.

- Jonathan Lippman, Chief Justice of the New York Court of Appeals, April 6, 2009, commenting on the introduction of mandatory caseload caps in New York City.

Introduction

The FY 2009-10 state budget included, for the first time, funding to reduce the caseloads of attorneys providing indigent legal services. Covering six providers of mandated criminal trial representation in the City of New York, the state committed to reduce caseloads over a five year period to the level of 400 new assignments per attorney per year, weighted for case seriousness. At that time, attorneys in the Legal Aid Society, the largest provider of such services in the City, received an average of 592 such assignments.¹ When the regulations adopted to establish caseloads became binding in April 2014,² the state budget appropriation for caseload reduction in those providers for that year alone totaled \$57,000,000³.

In 2013, in the midst of this extraordinary progress in New York City, the Office of Indigent Legal Services (ILS) issued the first ever statewide estimate of the cost of compliance with maximum national caseload limits in the 129 providers of indigent legal services in the 57 counties of upstate New York. This study, referred to hereinafter as the *2012 Report*, revealed that those providers averaged no less than 719 cases per attorney in 2012.⁴ Bringing them into compliance with national caseload limits, meanwhile, was estimated to cost \$111,214,533. To date, a total of \$12 million, to be distributed under

¹ Eligon, J. (2009), 'State Law to Cap Public Defender's Caseloads, but Only in the City.' *New York Times*, April 5, 2009, available at http://www.nytimes.com/2009/04/06/nyregion/06defenders.html?_r=0 (accessed Sept. 15, 2014).

² See Title 22 NYCRR Judiciary, Part 127.7 (2010). These rules provide that the number of cases assigned in a calendar year "shall not exceed 150 felony cases; or 400 misdemeanor cases; or a proportionate combination of felony and misdemeanor cases (at a ratio of 1:2.66)." They further provide that the "workload standards shall constitute non-binding guidelines between April 1, 2010 and March 31, 2014, and shall be binding effective April 1, 2014."

³ See Chapter 51 of the Laws of 2014

⁴ This report is an update on, and should be read in conjunction with, the *2012 Report* titled [An Estimate of the Cost of Compliance With Maximum National Caseload Limits in Upstate New York](https://www.ils.ny.gov/files/Estimate%20of%20Upstate%20Cost%20Of%20Compliance%20Report%20Nov%202013.pdf) (Office of Indigent Legal Services, November 2013), which can be found at <https://www.ils.ny.gov/files/Estimate%20of%20Upstate%20Cost%20Of%20Compliance%20Report%20Nov%202013.pdf> (accessed Sept 15, 2014). This prior report provides additional detail on the methodologies employed below both for data gathering and analysis.

the auspices of ILS across 3 years at a rate of \$4 million a year, has been appropriated toward meeting this need.⁵

This Report presents an analogous analysis to the *2012 Report* for the year 2013, and compares the findings across the two years. It is divided into two sections. In Section I we present data on caseload, staffing and expenditure levels among the providers of indigent legal services operational in upstate New York in 2013 as compared with 2012. In Section II we present the results of our analysis of these data, concluding that an additional \$105,199,248 would have been required to meet maximum national caseload limits in 2013. Attorneys in upstate New York providers took an average of 680 weighted cases in 2013, equivalent to 185% of the maximum national caseload limit of 367. Meeting national standards among assigned counsel providers, meanwhile, would have required over 1.7 million hours of work at a cost of \$117,260,785, while actual spending among these programs totaled just \$77,112,993. The projected cost of bringing upstate providers into compliance with maximum national caseload limits therefore includes both the costs for the addition of 530 full-time attorneys and 294 non-attorney staff in institutional providers and full funding for the shortfall in assigned counsel spending.

The caseloads, staffing and resources available to providers of indigent legal services define not only the working conditions of lawyers within those providers, but also the quality of services they are able to provide to clients. As long as providers of indigent legal services suffer from resource needs as vast as those documented in this report, it cannot reasonably be expected that the services they provide will be of adequate quality to satisfy those clients, performance standards for representation, or the demands of the United States and New York constitutions.

⁵ These funds were first appropriated in FY 2012-13. For more details, see <https://www.ils.ny.gov/content/upstate-quality-improvement-and-caseload-reduction> (accessed Sept. 20, 2014).

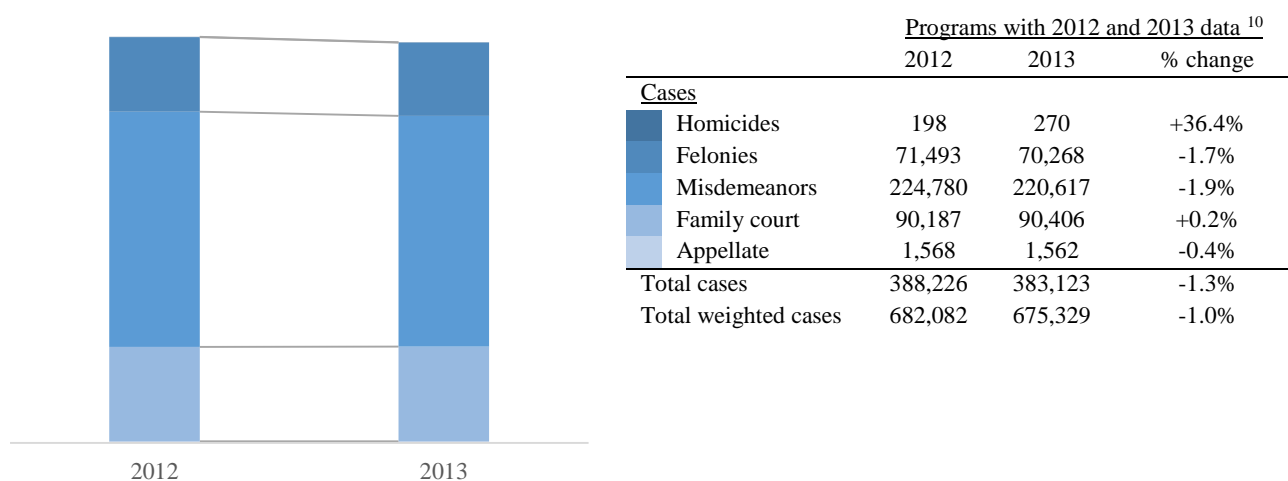
Section I: Data

ILS collected data on caseloads, staffing and expenditure data from each of the 130 providers of indigent legal services operational in the 57 upstate counties in 2013.⁶ Of these, 72 were institutional providers while 58 were assigned counsel providers.⁷

How Many Cases Were Upstate Providers Handling in 2012 and 2013?

Data on the number of new cases assigned to each program in the year 2013 were obtained from UCS-195 filings submitted to the Office of Court Administration by providers of indigent legal services. Where these data were unavailable or unsuitable, they were instead obtained through direct communication with those providers themselves.⁸ In total, providers were assigned an estimated total of 386,823 new cases in 2013, equivalent to 683,932 misdemeanor-level cases when case weights were applied.⁹ Comparing data from 2012 and 2013, the weighted total of cases statewide fell by 1% (see Figure 1). Among institutional providers, however, weighted caseloads increased by 0.4%, while they declined by 3.7% among assigned counsel providers (see Figure 2).

Figure 1: New Cases In Upstate Counties, 2012 and 2013



⁶ Data were successfully collected from all providers in 2013. In our *2012 Report*, by contrast, funding needs in 5 programs had to be estimated due to the unavailability of caseload data in those programs (see *2012 Report*, page 8).

⁷ For definitions of these terms, see the *2012 Report*, pages 3 to 6. This compares to 129 providers in 2012. A new institutional provider of conflict representation in family court was established in Otsego County in late 2013. The number of assigned counsel programs remained at 58 – one per county, with the exception of Wayne County which continued to organize assignments in criminal and family court under two separate programs.

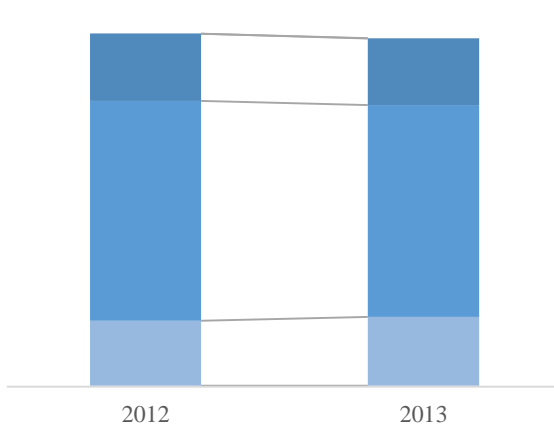
⁸ As in 2012, certain data had to be estimated (see footnote 28 of the *2012 Report*). Three providers could only provide a total count of criminal cases, which were broken out into estimates of felony and misdemeanor totals using county arrest data. Three further programs could only provide data for certain months of the year due to transitions in management of the program, which were then scaled up to estimate full-year totals. When data on newly assigned cases were not available, we substituted data on number of cases closed disposed or vouchered during the year, on the assumption that these would be reliable proxies for the numbers of cases opened.

⁹ We weighted homicide, felony and family court cases as equal to 2.67 misdemeanors, and appellate court cases as equal to 16 misdemeanors. See ‘Caseload Limits’ section of the *2012 Report*, beginning page 3, for a detailed explanation of this weighting system.

¹⁰ To assure a valid comparison, only data from the 124 programs for which we had caseload data in both 2012 and 2013 were used. The six programs dropped from the analysis were the five assigned counsel programs with missing data in 2012, and the one additional institutional provider created in 2013. The total number of cases for all 130 programs in 2013 was 273 homicides, 70,701 felonies, 221,565 misdemeanors, 92,699 family court cases and 1,585 appellate cases. The total case count was therefore 386,823, and the weighted caseload total was 683,932.

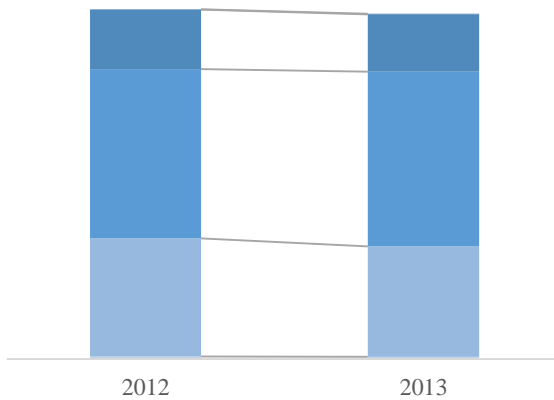
Figure 2: New Cases In Upstate Counties, 2012 and 2013, by Program Type

Institutional Providers



Cases	Programs with 2012 and 2013 data ¹¹		
	2012	2013	% change
Homicides	64	104	+62.5%
Felonies	50,760	50,197	-1.1%
Misdemeanors	165,708	159,777	-3.6%
Family court	49,025	51,849	+5.8%
Appellate	650	761	+17.1%
Total cases	266,207	262,688	-1.3%
Total weighted cases	442,705	444,694	+0.4%

Assigned Counsel



Cases	Programs with 2012 and 2013 data ¹²		
	2012	2013	% change
Homicides	134	166	+23.9%
Felonies	20,733	20,071	-3.2%
Misdemeanors	59,072	60,840	+3.0%
Family court	41,162	38,557	-6.3%
Appellate	918	801	-12.7%
Total cases	122,019	120,435	-1.3%
Total weighted cases	239,377	230,636	-3.7%

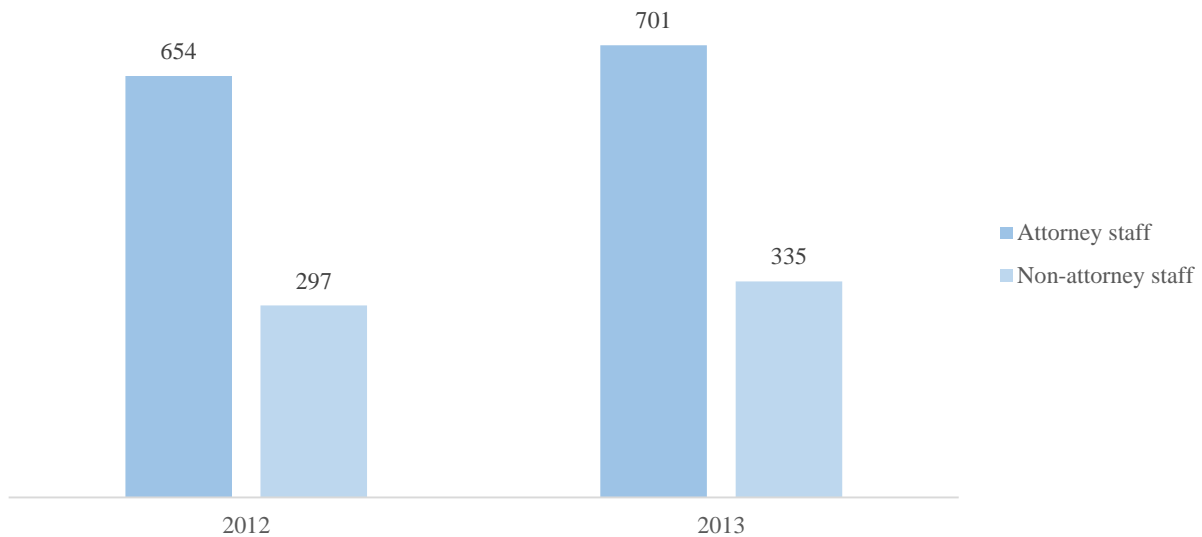
¹¹ Caseload data were available for all 71 institutional providers active in 2012, and all 72 in 2013. The additional 2013 provider was excluded from the comparison of the two years to assure the comparison was valid. The total number of cases for all 72 programs in 2013 was 104 homicides, 50,197 felonies, 159,777 misdemeanors, 51,879 family court cases and 761 appellate cases. The total case count was therefore 262,718, and the weighted caseload total was 444,774.

¹² Caseload data were missing for five programs in 2012, for a total sample of only 53 programs that year, but were obtained for all 58 programs in 2013. These five programs were excluded from the comparison of the two years to assure the comparison was valid. The total number of cases for all 58 programs in 2013 was 169 homicides, 20,504 felonies, 61,788 misdemeanors, 40,820 family court cases and 824 appellate cases. The total case count was therefore 124,105, and the weighted caseload total was 239,158.

How Many Staff Were Employed In Upstate Institutional Providers in 2012 and 2013?

ILS obtained data on the number of full-time-equivalent attorney and non-attorney staff working in institutional provider offices in 2012 and 2013. Providers were asked to supply information on the number of part-time and full-time staff in each category, and to specify what proportion of a full-time employee part-time staff person represented.¹³ The equivalent of a total of 701 full-time attorneys were employed in 2013 by the 72 institutional providers in operation that year, compared to 654 among 71 providers in 2012, for an increase of 7.3% (see Figure 3). Non-attorney staff rose to an equivalent of 335 full-time staff in 2013, up from 297 in 2012, an increase of 12.6%.¹⁴

Figure 3: Full-Time-Equivalent Attorney And Non-Attorney Staff In Institutional Providers, 2012 and 2013.



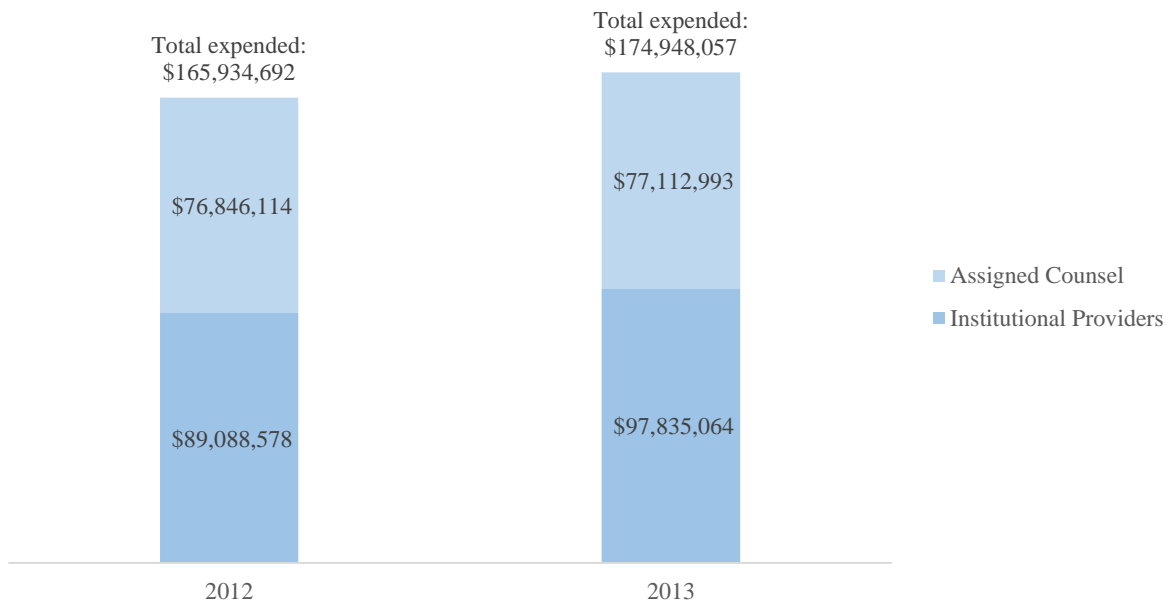
¹³ For example, if a staff-member worked for 20 hours a week and the standard full-time work week in the county was 40 hours, the part-time staff member was counted as 0.5 of a full-time employee. On the other hand, if a part-time employee worked 30 hours and a standard full-time week was 35 hours, a weight of 0.86 was used. Where no weight was specified, 0.5 was used for part-time employees.

¹⁴ Non-attorney staff included all staff in the institutional providers who were not fulfilling an attorney role. This number therefore combines all secretarial, receptionist, administrative, investigator and paralegal staff, among others.

How Much Did Programs Spend In 2012 and 2013?

Expenditures on indigent legal services among all providers totaled \$174,948,057 in 2013. This was an increase of 5.4% on 2012, when they totaled \$165,934,692 (see Figure 4). While expenditures increased in both institutional providers and assigned counsel programs, the bulk of the increase was in institutional providers where expenditures in 2013 were 9.8% higher than in 2012. In comparison, assigned counsel program expenditures increased just 0.3 %.

Figure 4: Expenditures In Indigent Legal Services Programs, Statewide by Program Type, 2012 and 2013



Section II: Analysis

How Many Cases Were Attorneys Taking in Upstate Institutional Providers in 2012 and 2013?

National maximum caseload limits stipulate an attorney should handle a weighted total of no more than 367 new cases each year in an institutional provider.¹⁵ The 72 providers in upstate New York averaged 680 weighted cases per attorney in 2013, exceeding the maximum national limit by over 85% (see Figure 5). Two providers exceeded 1,600 cases per attorney in 2013, a number over four times the maximum national limit (see Figure 6).

Figure 5: Weighted Caseloads Per Attorney In Institutional Providers, 2012 and 2013

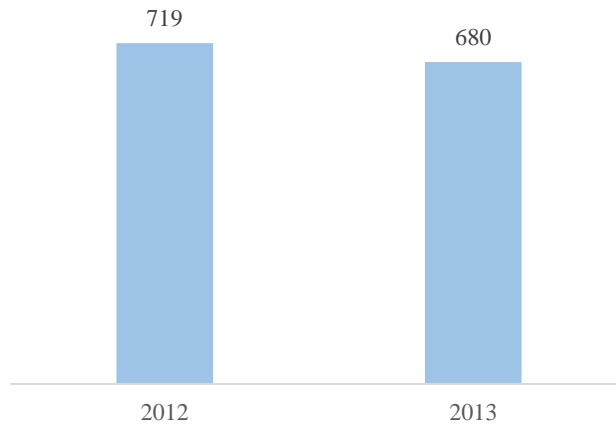
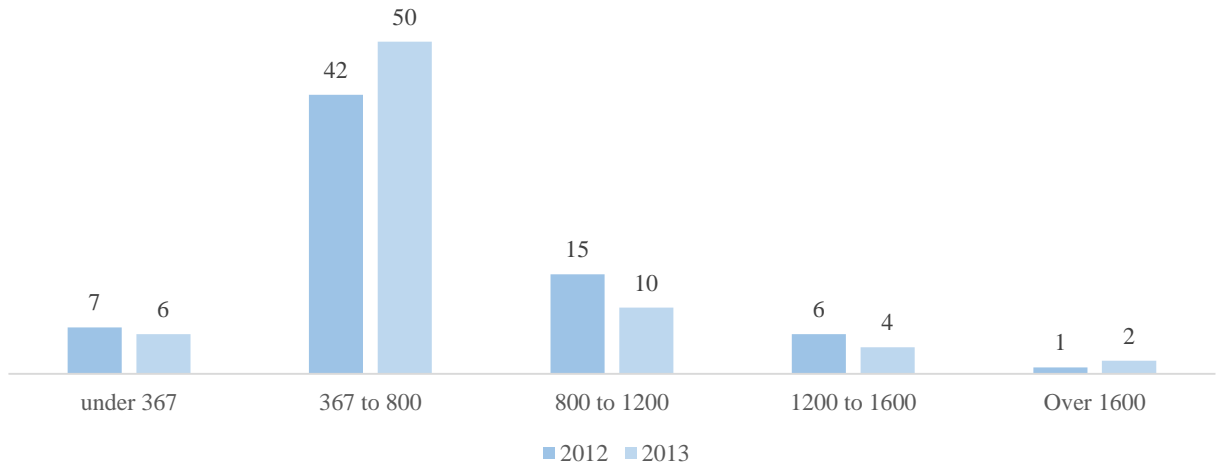


Figure 6: Distribution Of Weighted Caseloads Per Attorney In Institutional Providers, 2012 and 2013.

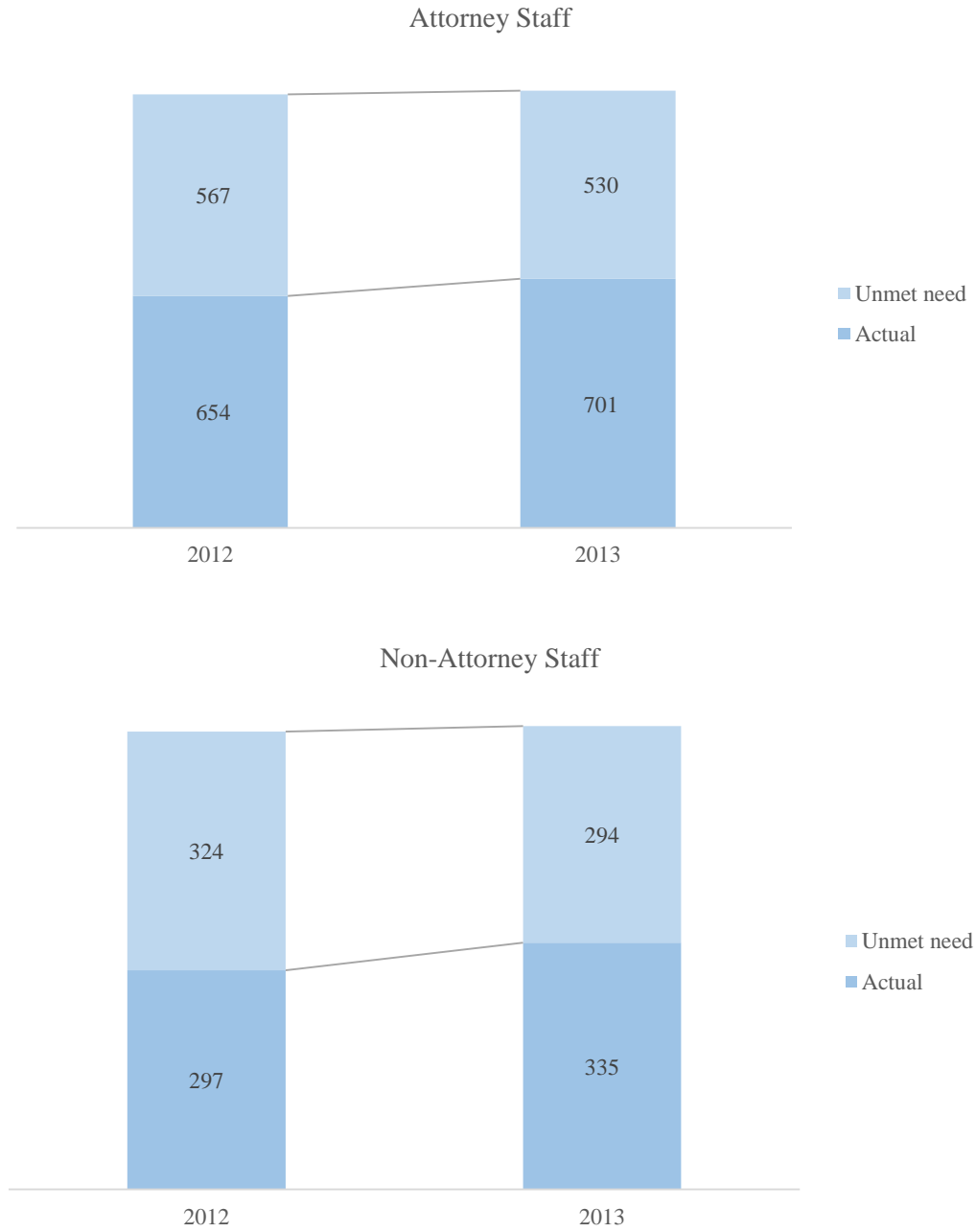


¹⁵ See 'Caseload Limits' section of *2012 Report* (pages 3-7) for more information on these limits.

How Many Additional Staff Did Institutional Providers Need In 2012 and 2013?

Institutional providers would have had to employ an additional 530 full-time attorneys to meet maximum national caseload limits in 2013, a reduction of 6.5% on 2012 when the number was 567. An additional 294 non-attorney staff (such as administrators, investigators, paralegals and secretarial staff) would also have been required, a reduction of 9.3% on 2012 (see Figure 7).

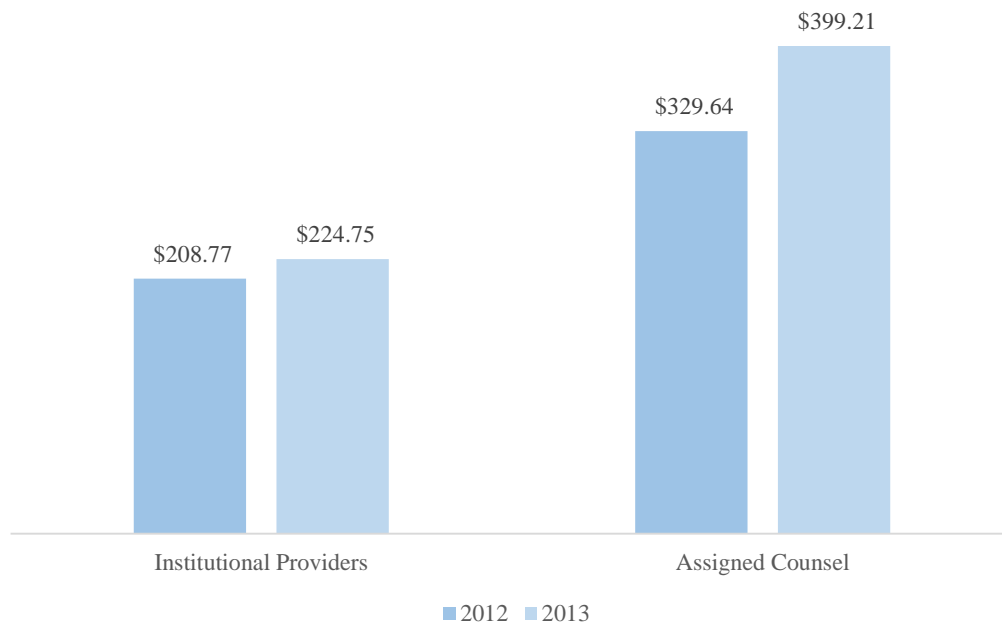
Figure 7: New Staff Required In Institutional Providers, 2012 and 2013



How Much Did Providers Spend Per Case in 2012 and 2013?

Institutional providers spent an average of \$224.75 per weighted case in 2013, a 7.6% increase on 2012 spending levels. Assigned counsel providers, by contrast, spent an average of \$399.21 per weighted case in 2013, 21.1% higher than in 2012 (see Figure 8).¹⁶

Figure 8: Provider Spending Per Weighted Case In 2012 and 2013

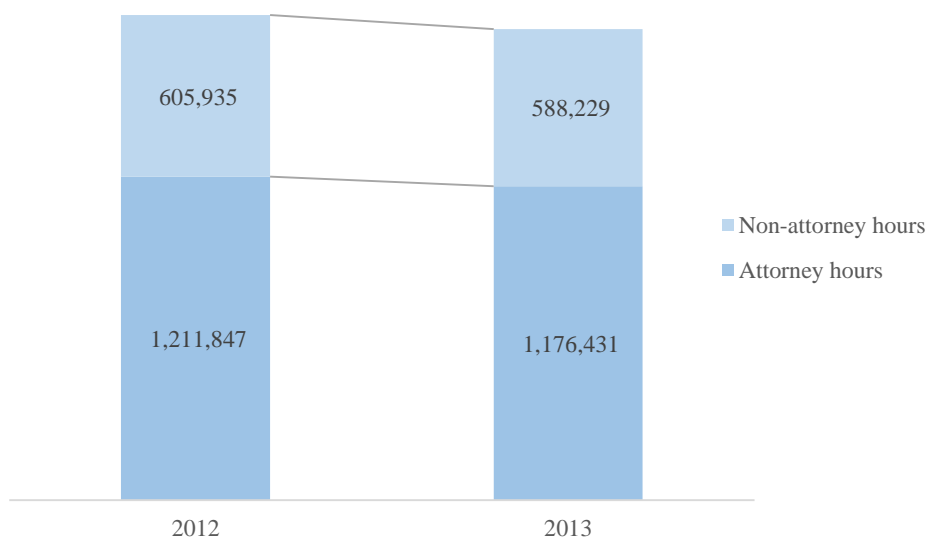


¹⁶ Caseload data were missing for 5 assigned counsel providers in 2012, and an additional institutional provider was added in 2013. For validity of comparison, these six programs were omitted from Figure 8 and the calculation of 'percentage change' figures. When all 130 providers are included, the spending per case figures in 2013 were \$223.61 in institutional providers and \$399.16 for assigned counsel.

How Many Hours Of Work Was Required To Handle Assigned Counsel Caseloads?

In the *2012 Report*, ILS calculated the number of hours of attorney and non-attorney work that would be required to handle the total caseloads of assigned counsel programs in keeping with national maximum caseload limits.¹⁷ Falling caseloads in these programs in 2013 meant the total number of hours required to perform that representation fell in 2013 (see Figure 9).

Figure 9: Attorney And Non-Attorney Hours Required For Assigned Counsel, 2012 and 2013



	Programs with 2012 and 2013 data ¹⁸		
	2012	2013	% change
<u>Working Hours Required To Meet Standards</u>			
Non-attorney hours	605,935	588,229	-2.9%
Attorney hours	1,211,847	1,176,431	-2.9%

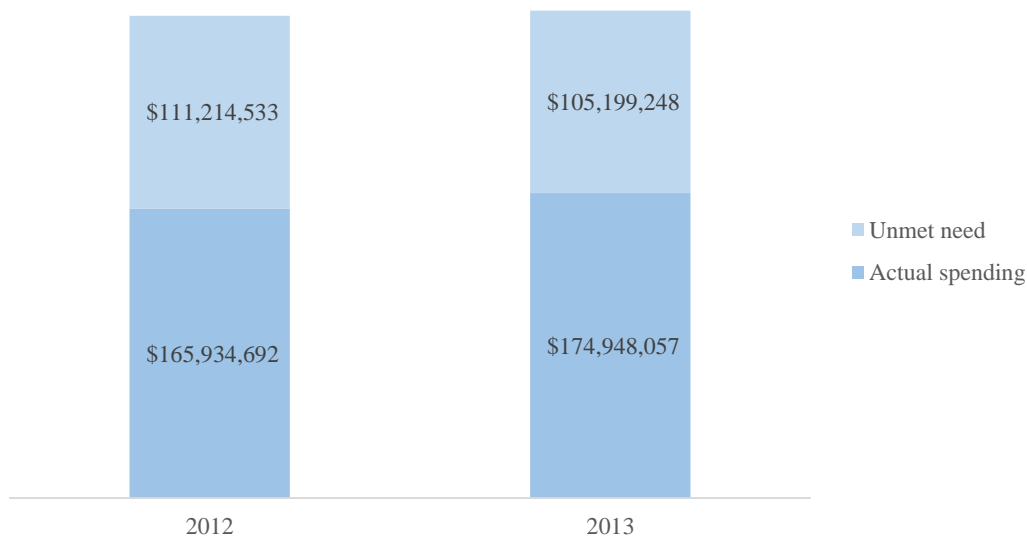
¹⁷ See *2012 Report*, Table 3.

¹⁸ Caseload data were missing for 5 assigned counsel providers in 2012. For validity of comparison, those five programs were omitted from the calculation of 'percentage change' figures. The totals required to handle cases in all 58 providers in 2013 was 609,960 non-attorney hours and 1,219,892 attorney hours.

How Much Additional Funding Was Required To Meet National Caseload Limits in 2012 and 2013?

The total unmet funding needs of all providers of indigent legal services in upstate New York counties in 2013 was estimated to be \$105,199,248, a reduction of 5.4% from the 2012 figure of \$111,214,533 (see Figure 10). These needs declined among both institutional providers and assigned counsel programs, though total funding needs increased overall among institutional providers (see Figure 11). Spending needs among specific programs varied considerably, but on average funding of institutional providers in upstate counties would have had to increase by an average of 79% to reach maximum national caseload limits. In assigned counsel programs the average needed increase was 57% (see Figure 12).¹⁹

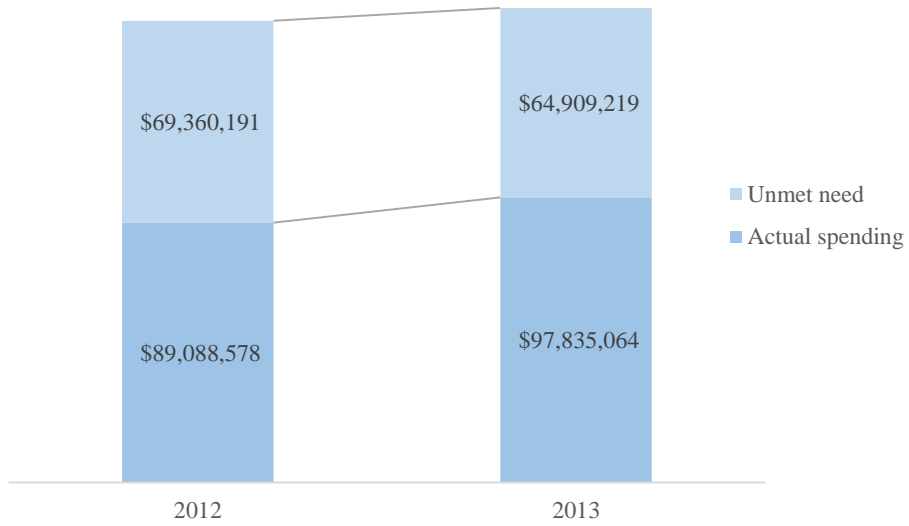
Figure 10: Actual and Needed Spending Statewide, 2012 and 2013



¹⁹ We derived these figures using the same analytic method as in the *2012 Report*, using updated salary data (see *2012 Report*, pages 10-14.) Average salaries for non-attorney employees were estimated to be \$49,457 on the basis of the average of May 2013 salaries for paralegals (\$54,640), private investigators (\$54,990) and administrative assistants (\$38,740) as published by the Bureau of Labor Statistics (BLS, see *May 2013 State Occupational Employment and Wage Estimates, New York* available at http://www.bls.gov/oes/current/oes_ny.htm#00-0000, accessed Sept 11, 2014). Fringe rates were also adjusted from 49% for attorneys and 66% for non-attorneys in 2012 to 49% and 67% respectively in 2013 based on updated BLS data (see *March 2014 employer Costs for Employment Compensation (Figure 3)*, available at http://www.bls.gov/news.release/archives/ecec_06112014.pdf (accessed Sept 11, 2014). Based on a 1,875 hour working year (see <http://workingdays.us>) this resulted in an estimated hourly cost for non-attorney services of \$44.05. Attorney salary information was not updated as the National Association for Law Placement survey from which the 2012 level was obtained is conducted biennially. Note that the fact that complete caseload data were obtained in 2013 for all 130 providers meant it was unnecessary to estimate needed funding for any providers, unlike in 2012 when such estimations were necessary for 5 providers.

Figure 11: Actual and Needed Spending in Providers, 2012 and 2013

Institutional Providers



Assigned Counsel

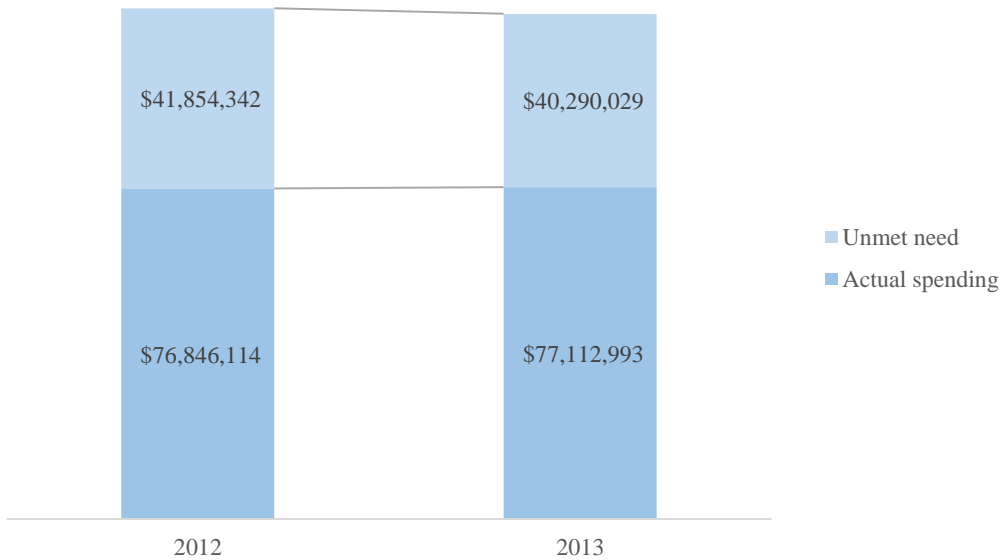
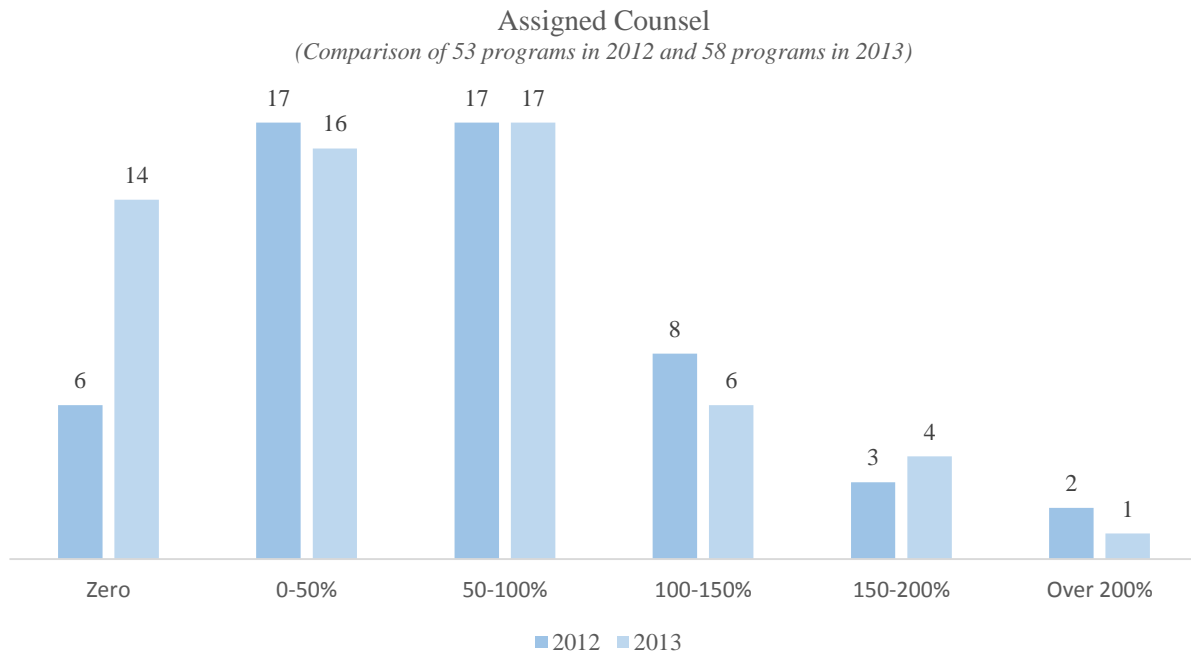


Figure 12: Distribution of Needed Spending Increases, 2012 and 2013



Conclusion

We estimate that a minimum of an additional \$105,199,248 was required to bring providers of indigent legal services in the upstate counties of New York State into compliance with maximum national caseload limits in 2013.