Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2014 Update

A Report of the New York State Office of Indigent Legal Services
November, 2015.
Estimate of the Cost of Compliance
with Maximum National Caseload Limits
in Upstate New York – 2014 Update

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Executive Summary

- In order to comply with maximum national caseload limits in 2014, New York would have had to spend an additional $99,084,243 on indigent legal services in upstate counties. This amount represents a 5.8% decrease on the $105,199,248 that would have been needed to bring upstate counties into compliance with caseload limits in 2013.

- $58,335,862, or 59% of this total, was needed in the 76 institutional providers of representation in the 57 upstate counties. This would have paid for 468 new staff attorneys in addition to the 736 employed in 2014. It would also have funded 265 new non-attorney staff in addition to the 350 who were already employed.

- $40,748,381, or 41% of this total, would have been required to bring the 58 upstate assigned counsel programs into compliance with national standards.

- In 2014, the 57 upstate counties of New York State spent $181,620,327, largely from county funds, to provide legally mandated representation to indigent persons under NY County Law Article 18-B. This represents an increase of almost 4% on the $174,948,057 spent in 2013.

- In the 72 institutional providers of indigent legal services operational in upstate New York for the whole of 2014, attorneys handled an average of 616 new weighted cases. This exceeds the maximum national caseload limit of 367 new weighted cases per attorney per year by 68%.

- This estimate is grounded on conservative assumptions with respect to both the caseload limits used and the methods by which 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.
Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2014 Update

Introduction
At 616 per attorney, caseloads in the average provider of indigent legal services in upstate New York continue to exceed levels last seen in New York City in 2009. Since that year, in recognition of the unsustainable nature of these numbers, significant new state funding has been made available to New York City to drive down caseloads. The results of that investment were reported this year in a study of Kings County (the borough of Brooklyn) which showed significant increases in the quality and quantity of services clients received after caseloads dropped to 358 per attorney.¹

This study analyzes the unmet resource needs of the 134 providers of representation active in upstate New York counties in 2014.² It is the third in the series of such studies produced annually by the Office of Indigent Legal Services (ILS).³ We are encouraged by evidence in the data that new attorney hiring is providing some caseload relief in some places, though as in previous years the need for added funding remains acute.

In four counties, only partial 2014 data were provided. Assigned counsel caseloads were not provided by these counties, and two of the four did not provide caseloads for an institutional provider. Two did not provide information on staffing, and one did not provide information on spending. Where these data were missing, we substituted 2013 numbers. ILS plans to pursue these missing data with renewed vigor next year, but we note that even excluding these programs altogether, unmet need in the remaining programs still totaled over $97.5 million. The depth of need in these counties cannot be doubted.

² This is up from 130 in 2013. A new institutional provider of conflict representation was established in Ontario County in late 2014. Additionally, a regional appellate provider was set up serving Cattaraugus, Genesee and Orleans counties. Because all data here are reported at the county level, this regional program is counted separately for each county.
How Many Cases Were Upstate Providers Handling 2012-2014?

Figure 1: New Cases In Upstate Counties, 2012-2014, All Providers

<table>
<thead>
<tr>
<th>Cases</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2013-14 % change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicides</td>
<td>198</td>
<td>273</td>
<td>288</td>
<td>+5.5%</td>
</tr>
<tr>
<td>Felonies</td>
<td>71,493</td>
<td>70,701</td>
<td>69,456</td>
<td>-1.8%</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>224,780</td>
<td>221,565</td>
<td>210,556</td>
<td>-5.0%</td>
</tr>
<tr>
<td>Family court</td>
<td>90,187</td>
<td>92,699</td>
<td>94,658</td>
<td>+2.1%</td>
</tr>
<tr>
<td>Appellate</td>
<td>1,568</td>
<td>1,585</td>
<td>1,504</td>
<td>-5.1%</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td>388,226</td>
<td>383,123</td>
<td>376,462</td>
<td>-2.7%</td>
</tr>
<tr>
<td><strong>Total weighted cases</strong></td>
<td>682,082</td>
<td>675,329</td>
<td>673,573</td>
<td>-1.5%</td>
</tr>
</tbody>
</table>
Figure 2: New Cases In Upstate Counties, 2012-2014, by Provider Type

### Institutional Providers

<table>
<thead>
<tr>
<th>Cases</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicides</td>
<td>64</td>
<td>104</td>
<td>131</td>
<td>+26.0%</td>
</tr>
<tr>
<td>Felonies</td>
<td>50,760</td>
<td>50,197</td>
<td>48,603</td>
<td>-3.2%</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>165,708</td>
<td>159,777</td>
<td>150,670</td>
<td>-5.7%</td>
</tr>
<tr>
<td>Family court</td>
<td>49,025</td>
<td>51,879</td>
<td>52,804</td>
<td>1.8%</td>
</tr>
<tr>
<td>Appellate</td>
<td>650</td>
<td>761</td>
<td>767</td>
<td>0.8%</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td>266,207</td>
<td>262,718</td>
<td>252,975</td>
<td>-3.7%</td>
</tr>
<tr>
<td><strong>Total weighted cases</strong></td>
<td>442,705</td>
<td>444,774</td>
<td>434,048</td>
<td>-2.4%</td>
</tr>
</tbody>
</table>

### Assigned Counsel

<table>
<thead>
<tr>
<th>Cases</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicides</td>
<td>134</td>
<td>169</td>
<td>157</td>
<td>-7.1%</td>
</tr>
<tr>
<td>Felonies</td>
<td>20,733</td>
<td>20,504</td>
<td>20,853</td>
<td>+1.7%</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>59,072</td>
<td>61,788</td>
<td>59,886</td>
<td>-3.1%</td>
</tr>
<tr>
<td>Family court</td>
<td>41,162</td>
<td>40,820</td>
<td>41,854</td>
<td>+2.5%</td>
</tr>
<tr>
<td>Appellate</td>
<td>918</td>
<td>824</td>
<td>737</td>
<td>-10.6%</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td>122,019</td>
<td>124,105</td>
<td>123,487</td>
<td>-0.5%</td>
</tr>
<tr>
<td><strong>Total weighted cases</strong></td>
<td>239,377</td>
<td>239,158</td>
<td>239,525</td>
<td>+0.2%</td>
</tr>
</tbody>
</table>
How Many Staff Were Employed In Upstate Institutional Providers in 2012-2014?

Figure 3: Full-Time-Equivalent Attorney And Non-Attorney Staff In Institutional Providers, 2012-2014.4

Counts of staff as of July 1, 2014, were requested from each institutional provider. Part-time staff were counted as a proportion of a full-time staff member (e.g., 0.5) with providers specifying the proportion. Non-attorneys includes all non-volunteer staff working in providers who are not attorneys, such as administrative staff, paralegals and investigators.

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4 Counts of staff as of July 1, 2014, were requested from each institutional provider. Part-time staff were counted as a proportion of a full-time staff member (e.g., 0.5) with providers specifying the proportion. Non-attorneys includes all non-volunteer staff working in providers who are not attorneys, such as administrative staff, paralegals and investigators.
How Much Did Programs Spend In 2012-2014?

Figure 4: Expenditures In Indigent Legal Services Programs Statewide 2012-2014, by Program Type

- Total expended: $181,620,327
- Total expended: $174,948,057
- Total expended: $165,934,692
- Total expended: $157,835,064
- Total expended: $104,414,823
- Total expended: $76,846,114
- Total expended: $77,112,993
- Total expended: $77,205,503

- 2012
- 2013
- 2014

- Institutional provider
- Assigned counsel
How Many Cases Were Attorneys Taking in Upstate Institutional Providers 2012-2014?  

Figure 5: Average Weighted Caseload Per Attorney In Institutional Providers, 2012-2014

![Bar chart showing average weighted caseload per attorney in institutional providers from 2012 to 2014.]

Figure 6: Distribution Of Weighted Caseloads Per Attorney In Institutional Providers, 2012-2014.

![Bar chart showing distribution of weighted caseloads per attorney in institutional providers from 2012 to 2014.]

During 2014, 4 new institutional providers were established. They took very few cases because they only operated for part of the year. Accordingly, we included only the 72 providers operational for the whole year in Figures 5 and 6.
How Many Additional Staff Did Institutional Providers Need 2012-2014?

Figure 7: New Staff Required In Institutional Providers, 2012-2014

Attorney staff

<table>
<thead>
<tr>
<th>Year</th>
<th>Unmet Need</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>567</td>
<td>654</td>
</tr>
<tr>
<td>2013</td>
<td>530</td>
<td>701</td>
</tr>
<tr>
<td>2014</td>
<td>468</td>
<td>736</td>
</tr>
</tbody>
</table>

Non-attorney staff

<table>
<thead>
<tr>
<th>Year</th>
<th>Unmet Need</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>324</td>
<td>297</td>
</tr>
<tr>
<td>2013</td>
<td>294</td>
<td>335</td>
</tr>
<tr>
<td>2014</td>
<td>265</td>
<td>350</td>
</tr>
</tbody>
</table>
How Much Did Providers Spend Per Case 2012-2014?

Figure 8: Provider Spending Per Weighted Case 2012-2014
How Many Hours Of Work Were Required To Handle Assigned Counsel Caseloads?

Figure 9: Attorney And Non-Attorney Hours Required For Assigned Counsel, 2012-2014

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2013-14 % change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-attorney hours</td>
<td>605,935</td>
<td>609,960</td>
<td>610,885</td>
<td>+0.2%</td>
</tr>
<tr>
<td>Attorney hours</td>
<td>1,211,847</td>
<td>1,219,892</td>
<td>1,221,746</td>
<td>+0.2%</td>
</tr>
</tbody>
</table>
How Much Additional Funding Was Required To Meet National Caseload Limits in 2012-2014? 6

Figure 10: Actual and Needed Spending Statewide, 2012-2014, All Providers

Figure 11: Actual and Needed Spending in Providers, 2012-2014, by Provider Type

Institutional Providers

- 2012: $69,360,191
- 2013: $64,909,219
- 2014: $58,335,862

Assigned Counsel

- 2012: $41,854,342
- 2013: $40,290,029
- 2014: $40,748,381
Figure 12: Distribution of Needed Spending Increases, 2012 - 2014

Institutional Providers
(Comparison of 71 providers in 2012, 72 in 2013 and 76 in 2014.)

Assigned Counsel
(Comparison of 53 providers in 2012 and 58 providers in 2013 and 2014.)
Conclusion

We estimate that a minimum of an additional $99,084,243 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 2014.