

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.

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with Maximum National Caseload Limits
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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.

¹ Labriola, M., Farley, E. J. and Rempel, M. (2015). Indigent Defense Reforms in Brooklyn, New York: An Analysis of Mandatory Case Caps and Attorney Workload. (New York, NY, Center for Court Innovation). Available at http://www.courtinnovation.org/sites/default/files/documents/Case_Caps%20NYC_0.pdf (retrieved 11/2/2015).

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.

³ The 2013 report can be found at <https://www.ils.ny.gov/files/Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York%20-%202013%20Update%209%2024%2014%20Final.pdf>. The 2012 report, including detailed methodological descriptions of how the analysis is conducted, can be found at <https://www.ils.ny.gov/files/Estimate%20of%20Upstate%20Cost%20Of%20Compliance%20Report%20Nov%202013.pdf>.

How Many Cases Were Upstate Providers Handling 2012-2014?

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

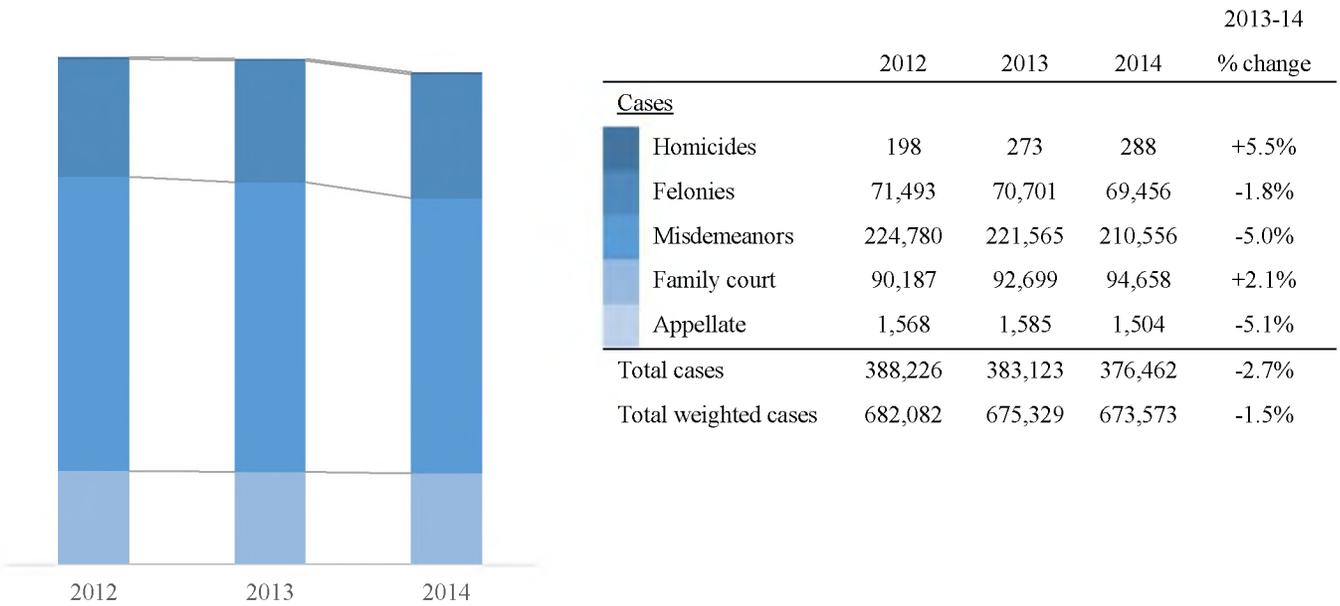
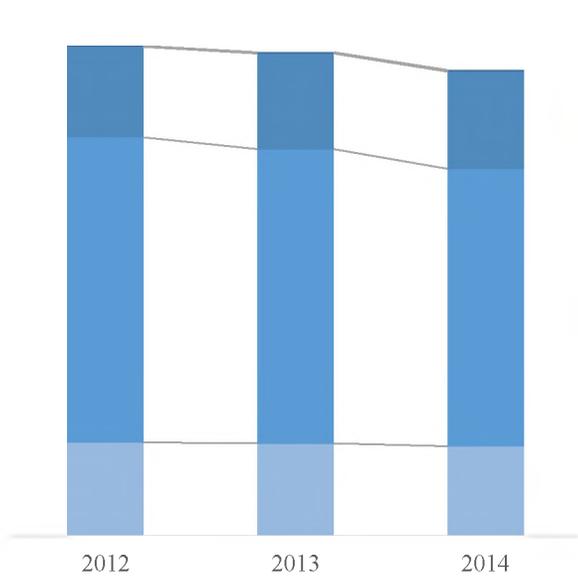


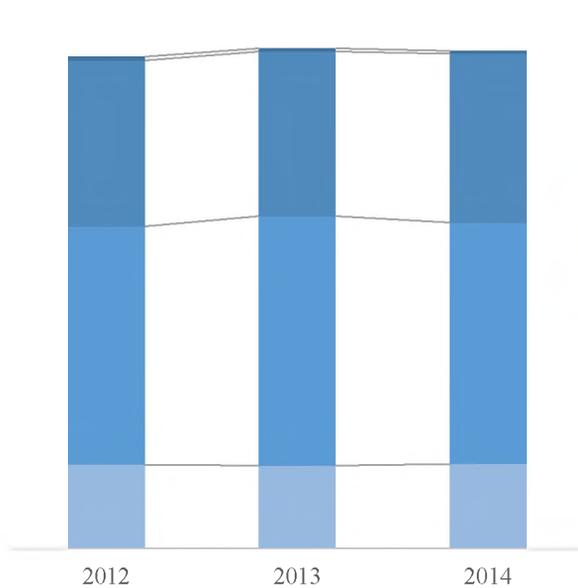
Figure 2: New Cases In Upstate Counties, 2012-2014, by Provider Type

Institutional Providers



	2012	2013	2014	2013-14 % change
<u>Cases</u>				
Homicides	64	104	131	+26.0%
Felonies	50,760	50,197	48,603	-3.2%
Misdemeanors	165,708	159,777	150,670	-5.7%
Family court	49,025	51,879	52,804	1.8%
Appellate	650	761	767	0.8%
Total cases	266,207	262,718	252,975	-3.7%
Total weighted cases	442,705	444,774	434,048	-2.4%

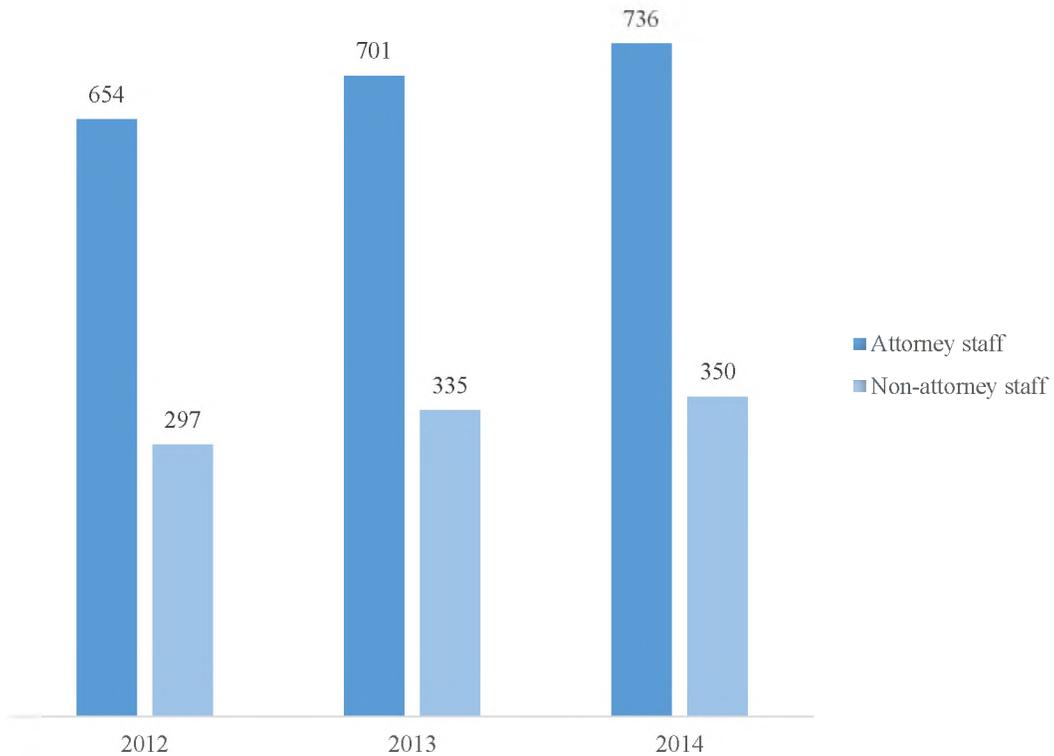
Assigned Counsel



	2012	2013	2014	2013-14 % change
<u>Cases</u>				
Homicides	134	169	157	-7.1%
Felonies	20,733	20,504	20,853	+1.7%
Misdemeanors	59,072	61,788	59,886	-3.1%
Family court	41,162	40,820	41,854	+2.5%
Appellate	918	824	737	-10.6%
Total cases	122,019	124,105	123,487	-0.5%
Total weighted cases	239,377	239,158	239,525	+0.2%

How Many Staff Were Employed In Upstate Institutional Providers in 2012-2014?

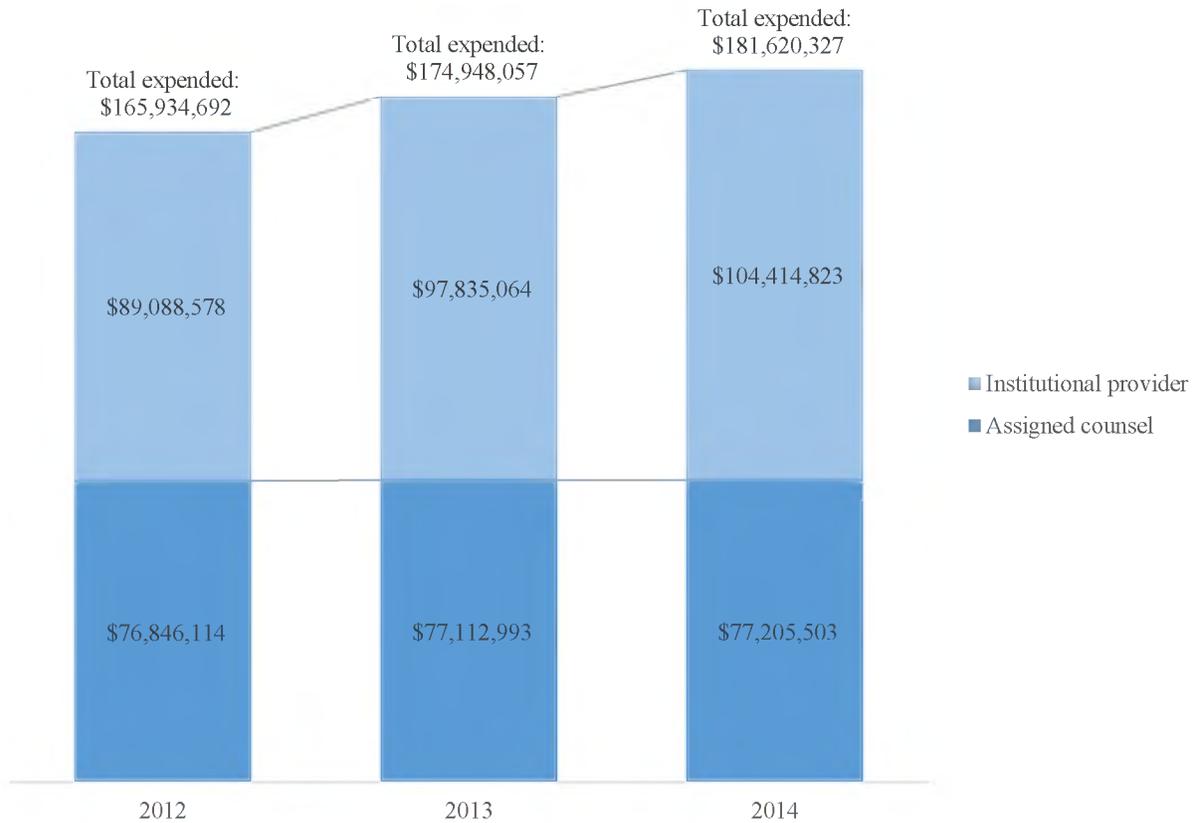
Figure 3: Full-Time-Equivalent Attorney And Non-Attorney Staff In Institutional Providers, 2012-2014.⁴



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



How Many Cases Were Attorneys Taking in Upstate Institutional Providers 2012-2014?⁵

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

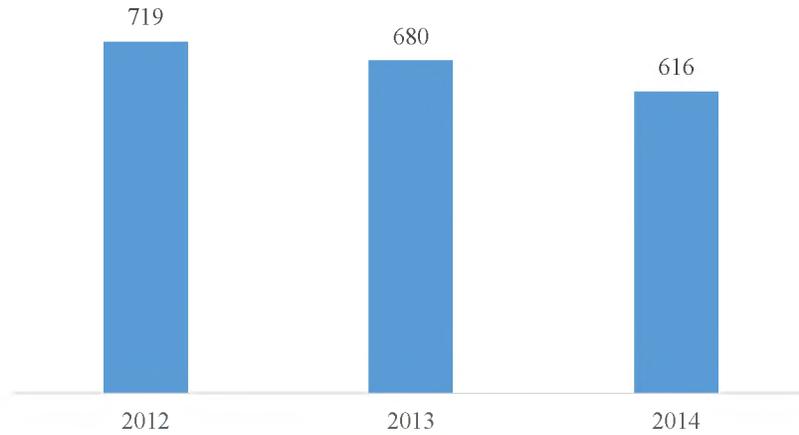
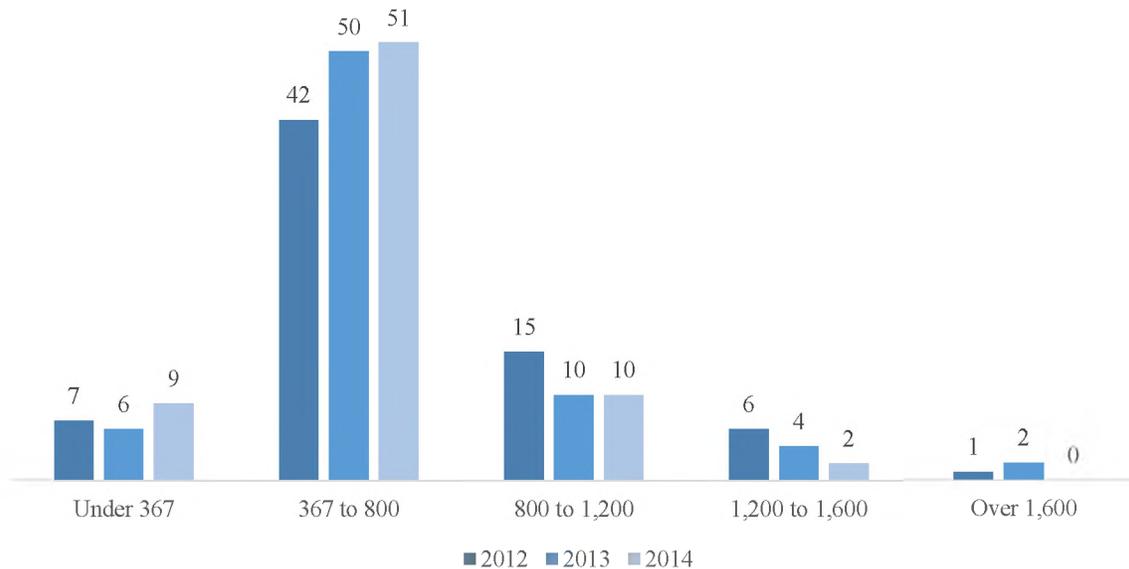


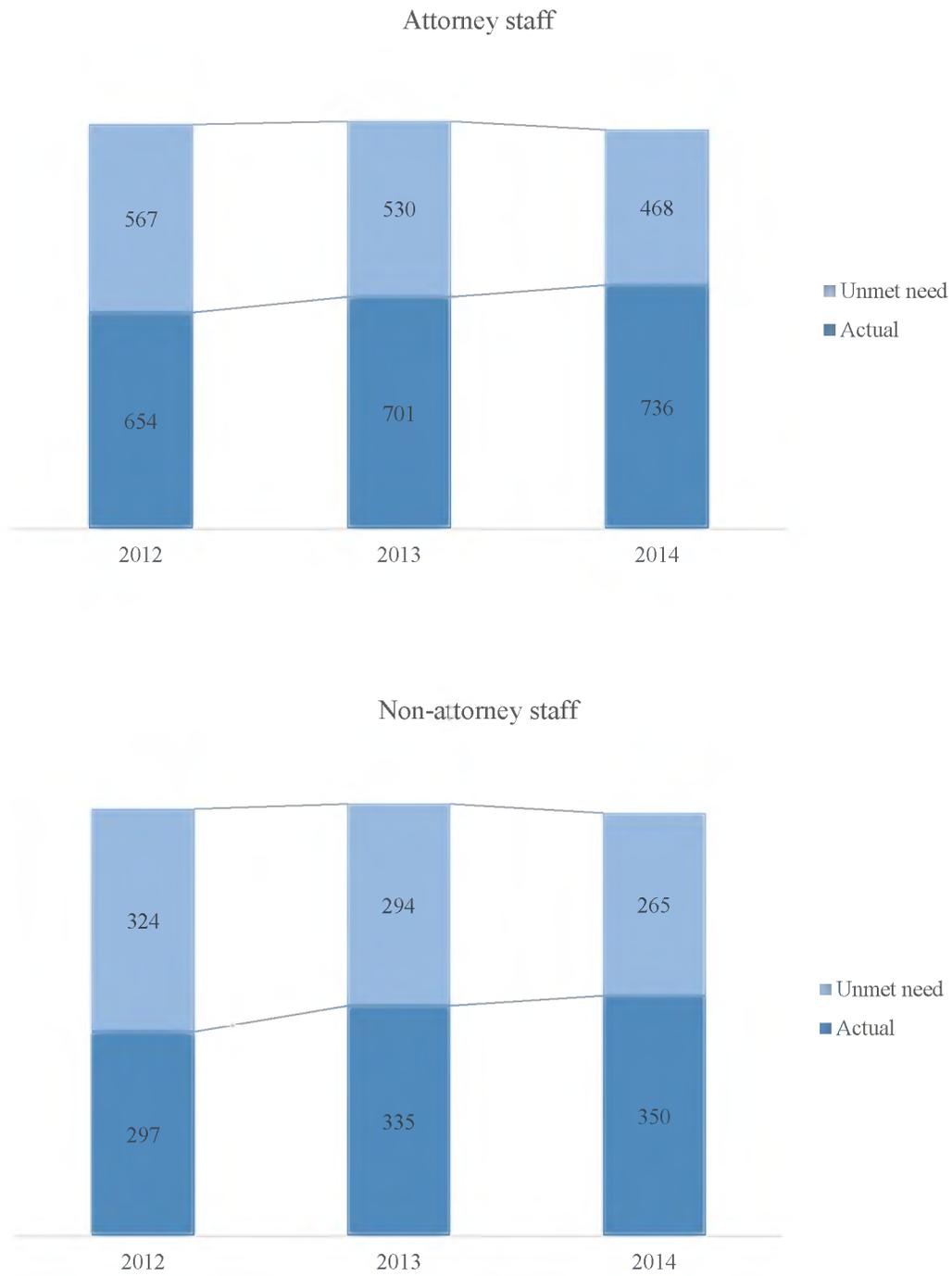
Figure 6: Distribution Of Weighted Caseloads Per Attorney In Institutional Providers, 2012-2014.



⁵ 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.

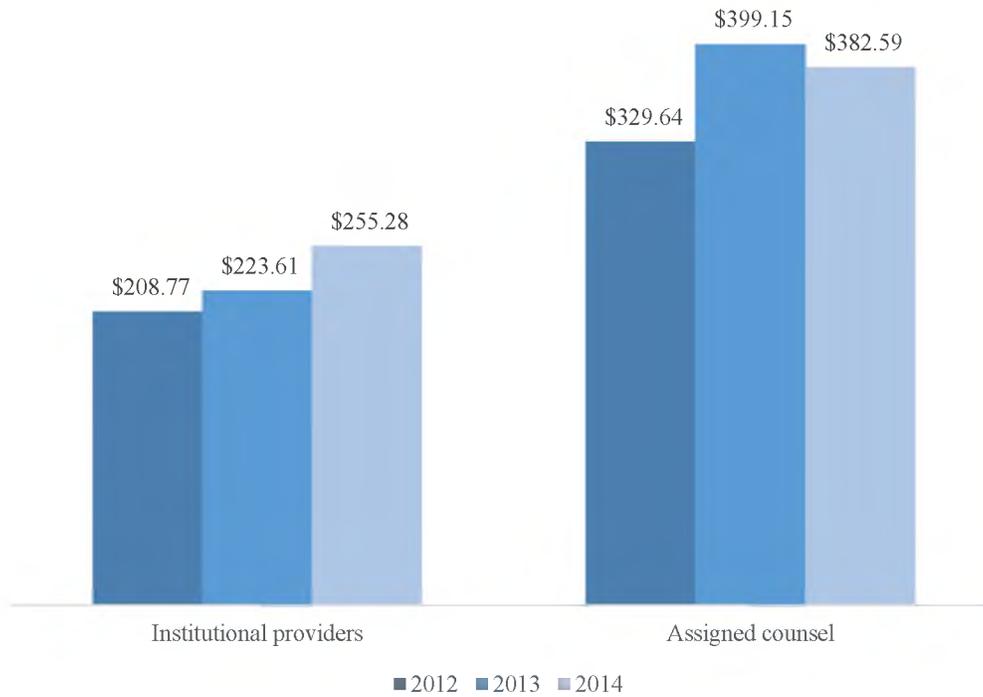
How Many Additional Staff Did Institutional Providers Need 2012-2014?

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



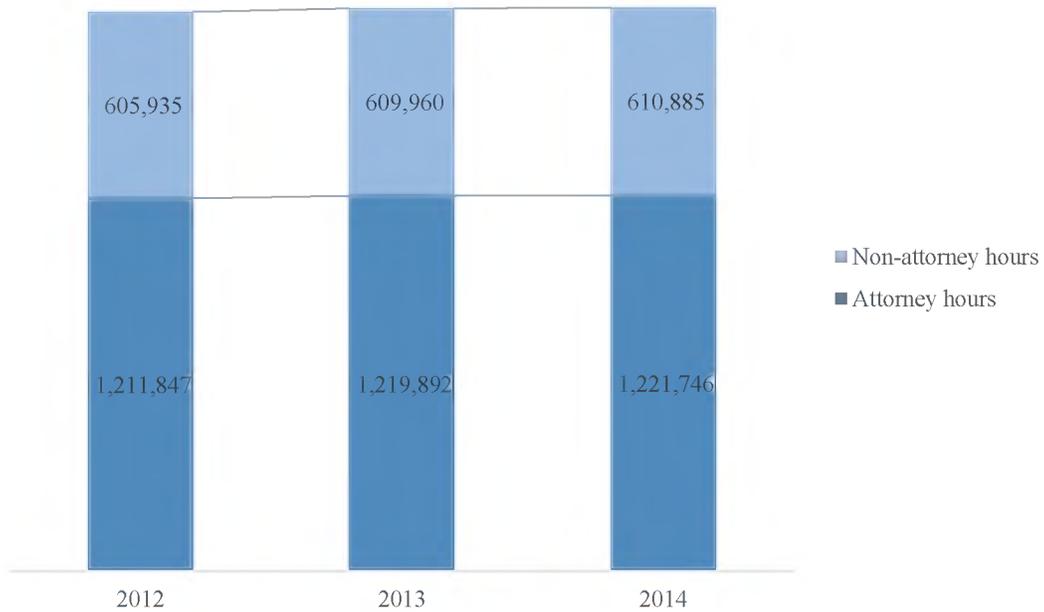
How Much Did Providers Spend Per Case 2012-2014?

Figure 8: Provider Spending Per Weighted Case 2012-2014



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

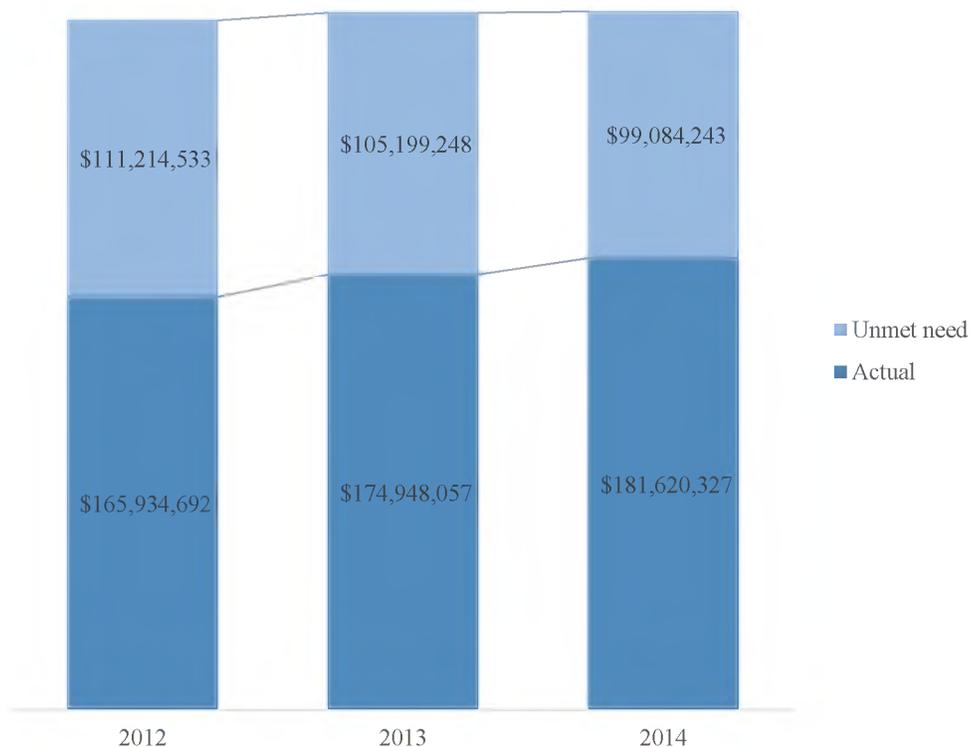
Figure 9: Attorney And Non-Attorney Hours Required For Assigned Counsel, 2012-2014



	2012	2013	2014	2013-14 % change
<u>Working Hours Required To Meet Standards</u>				
Non-attorney hours	605,935	609,960	610,885	+0.2%
Attorney hours	1,211,847	1,219,892	1,221,746	+0.2%

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



⁶ The statistics in Figures 10 and 11 employ the analytic methods described in the *2012 Report* using updated salary data (see *2012 Report* supra note 3, pp. 10-14). Salaries for non-attorney employees in 2014 were estimated at \$49,707 – the average of May 2014 salaries for paralegals (\$56,200), private investigators (\$54,990) and administrative assistants (\$38,740) as published by the Bureau of Labor Statistics (see *May 2014 State Occupational Employment and Wage Estimates, New York*, available at http://www.bls.gov/oes/current/oes_nv.htm, accessed Sept. 23, 2015). Fringe rates were set at 50% for attorneys and 68% for non-attorney staff based on the Bureau of Labor Statistics publication *March 2015 Employer Costs for Employment Compensation* (see http://www.bls.gov/news.release/archives/ecec_06102015.pdf, Table 3). These figures resulted in an estimated hourly cost for non-attorney services of \$44.53. Attorney salary information was not updated as the 2014 National Association for Law Placement survey did not collect sufficient responses for a regional estimate for the North-East. Accordingly, the 2012 salary information was retained (\$51,521). See National Association for Law Placement (2014). *Public Sector and Public Interest Attorney Salary Report*, (NALP, Washington DC).

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

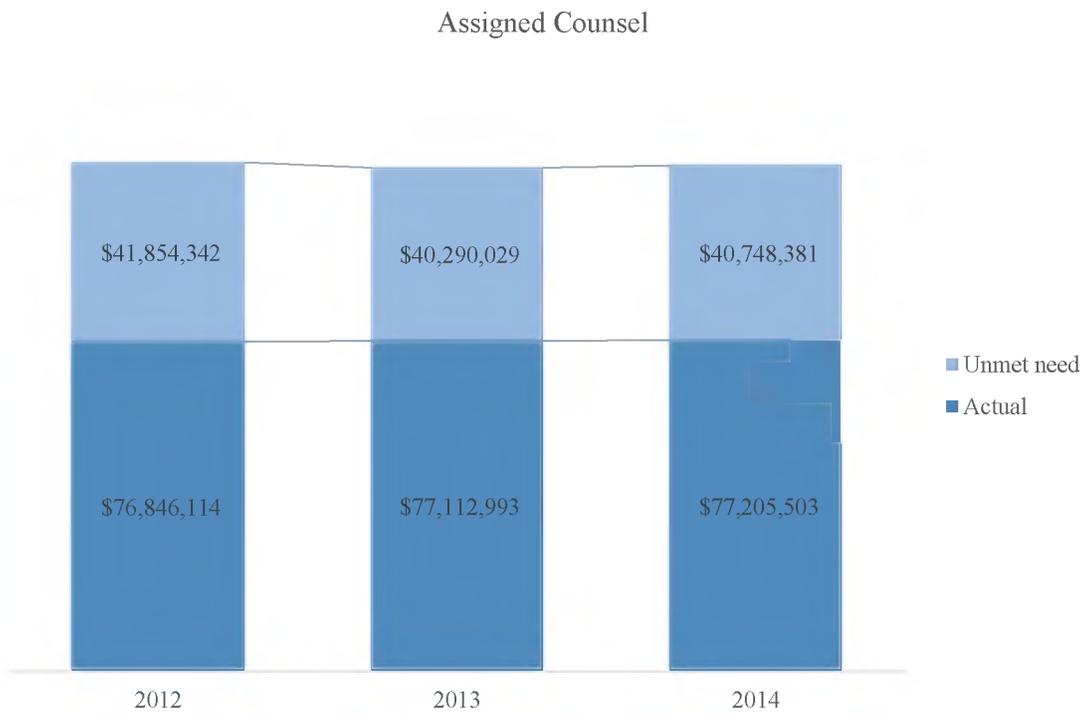
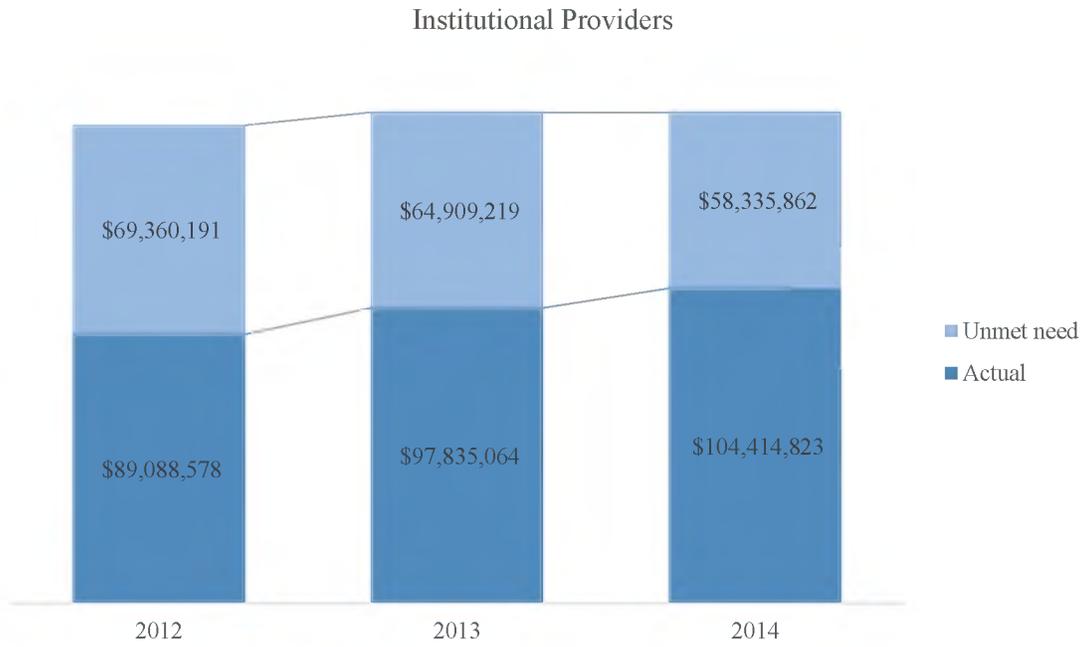
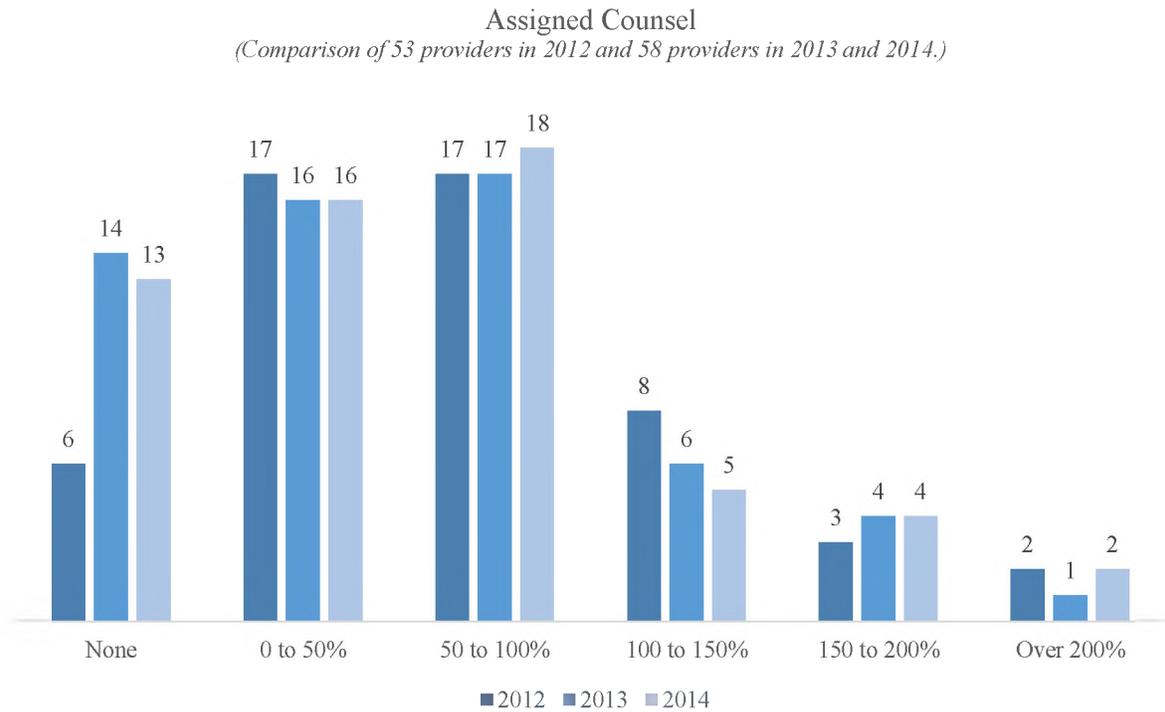
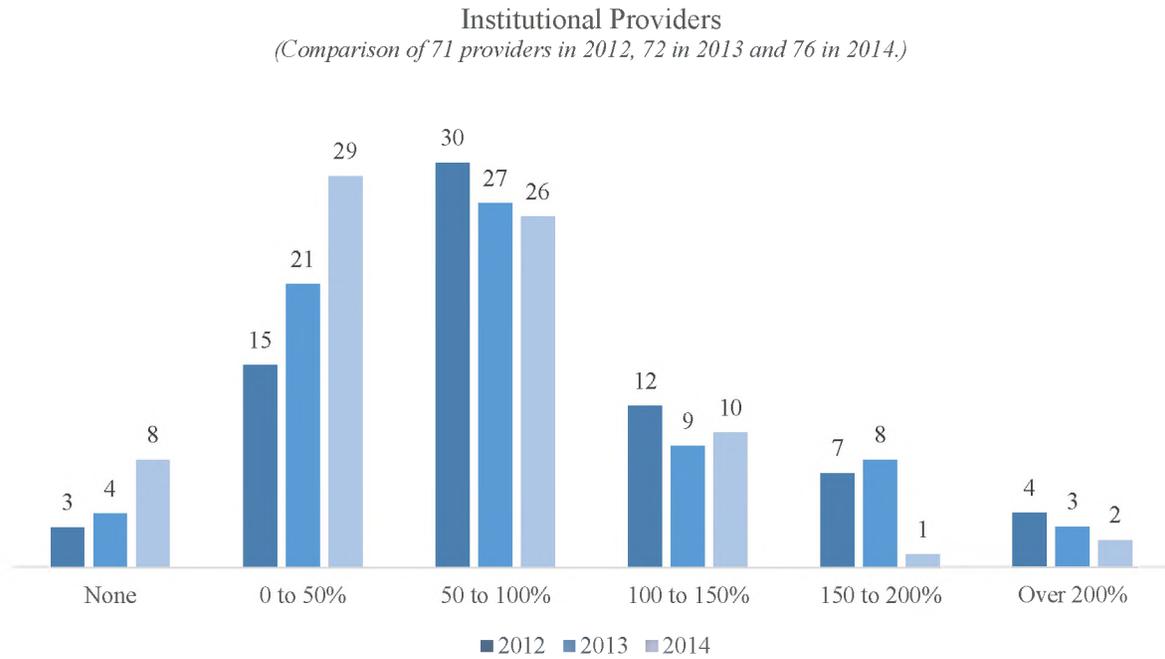


Figure 12: Distribution of Needed Spending Increases, 2012 -2014



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.