Plan for Implementation of Caseload Standards in New York State

December 1, 2017

NEW YORK STATE | Office of Indigent Legal Services

Improving the quality of mandated representation throughout the state of New York

Contents

Section I: Introduction and Scope

The 2017-18 New York State budget assigned to the Office of Indigent Legal Services (ILS) the responsibility of planning for the implementation of caseload standards among all providers of representation to persons unable to afford a lawyer. That obligation is fulfilled by this document. In this introductory section, we lay out the scope of the responsibility with which ILS has been entrusted, and provide an overview of the contents of what follows.

The budget legislation stated the Office must:

> Develop and implement a written plan that establishes numerical caseload/workload standards for each provider of constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.

The plan, to be completed by December 1, 2017,

> …shall include interim steps for each county and the city of New York for achieving compliance with the plan. Such plan shall include the number of attorneys, investigators, and other non-attorney staff and the amount of in-kind resources necessary for each provider of mandated representation to implement such plan.

Further, the Office must,

> …monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.

On December 8, 2016, ILS issued its caseload standards in its report *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring* v. The State of New York *Settlement*.[1] These standards seek to assure that providers of representation have sufficient time to dedicate to each case in which they provide advice or representation to a client. To accomplish that goal, they cap the number of new assignments an institutional provider may receive in a year, and state the minimum amount of time that assigned counsel providers of representation should, on average, spend on their cases. The standards laid out in that report distinguished seven categories of case each with a distinct weight, and are reproduced in Table 1 below.

Table 1: Caseload Standards Issued by ILS

Case type	Maximum annual cases	Minimum average hours per case
Violent Felonies	50	37.5
Non-violent Felonies	100	18.8
Misdemeanors and Violations	300	6.3
Post-disposition	200	9.4
Parole violation	200	9.4
Appeals of verdicts	12	156.3
Appeals of guilty pleas	35	53.6

[1] The full report can be found here: https://www.ils.ny.gov/files/*Hurrell-Harring*/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf.

This plan lays out a process for the implementation of those standards in the fifty-two counties outside of New York City where the *Hurrell-Harring* settlement did not apply, and in New York City itself.

Successful implementation of caseload standards implies two things. The first and most important is that ILS must fund providers sufficiently that they are able to comply with the standards themselves by 2023, whether through the recruitment of new attorneys to institutional provider offices or through additional support for assigned counsel. Building on a method pioneered by ILS in its *Cost Estimate* reports, we lay out the resources needed to fulfill this obligation in Section IV below.

Second, given the responsibility ILS has to monitor and report on compliance with caseload standards, the Office must also assure that it has adequate data to do so. As we reveal in Section II below, providers around the state presently differ substantially in their ability to supply the data required to ILS to measure caseload standard compliance, and accordingly our plan also lays out new guidelines for reporting of caseloads, provides assistance to counties, and provides additional staff at ILS itself (in the central office and within each proposed Regional Support Center), to improve data collection.

The Plan contains five sections, including this one. The second details a research study conducted by ILS to develop a uniform definition of a case for application in providers of representation statewide. The third section contains those definitions. In the fourth section, we compute funding allocations for every county to assure caseload standards compliance by 2023. And in the fifth, we outline the steps that must take place to implement the plan fully by that time.

Section II: Developing Uniform Definitions for Case Counting

We conducted a multi-method study to develop definitions for case counting for use among all providers of criminal representation across New York State in reporting to ILS.[2] To do so, we conducted a series of inquiries into how providers count cases at present, and how feasible the application of a uniform case definition would be. The methods we employed are described below, followed by our findings. The final definitions that we developed can be found in Section III.

The question 'What is a case?' comes up for ILS a lot, often as a note of caution. If one provider counts cases a certain way, and another provider counts them a different way, how can you be sure that anything else about your research is valid? The concern is well-taken. Moreover, the definition of 'case' is probably nowhere more important than it is in the context of implementation of caseload standards, where the very nature of the exercise implies some attempt to quantify workload in terms of 'cases'. Thus, deciding how to count cases is an important part of the implementation of caseload standards themselves.

Our caseload standards follow the common practice of counting *new* case assignments, a common but not universal approach to caseload counting.[3] Importantly, this therefore narrows the task of defining how to count a case to the question of how to define when a case is newly opened, and does not evoke other issues sometimes discussed in the context of caseload calculations, such as case backlog.

Cases, for defenders, are units of work within which legal advice and representation are provided to clients. As such, counting cases among providers of defense services is a distinct exercise from counting caseloads of even closely related entities like judges, courts or prosecutors. Defenders do not only receive cases when courts assign them, but may open cases when clients request representation. Equally, defenders may receive assignments to represent a person long after their court case has begun, such as in situations where a person was previously represented by another attorney who had to withdraw from the case. For these reasons and more, defenders may count different numbers of cases than their colleagues in the judiciary or the prosecution – indeed, even when those colleagues have been engaged in the processing of the self-same cases – for the simple reason that the events that trigger the onset of representation are similar, but not always the same as, the events that trigger the onset of a court case or a prosecution.[4] Any definition of defender cases, therefore, must be tailored to the unique features of defense work.

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[2] Multi-method approaches are reviewed in J, Brewer and A, Hunter (2006), *Foundations of Multimethod Research: Synthesizing Styles* (Sage, Thousand Oaks, CA).

[3] Case counting practices in the Legal Services Corporation emphasize counting cases closed, for example, in order to record the 'level of service' clients received during the case (see *Legal Services Corporation Case Service Report Handbook*, 2011, available at https://www.lsc.gov/sites/default/files/attach/2015/09/LSCCaseServiceReportHandbook-2011.pdf). Attorneys for Children in New York State, meanwhile, are limited to 150 open cases at any one time (Rules of the Chief Administrative Judge, § 127.5 Workload of the Attorney for the Child. Available at http://www.nycourts.gov/rules/chiefadmin/127.shtml#05).

[4] Throughout the development of our caseload standards, we have assumed that individual cases vary tremendously in length, and that cases can end or begin for a variety of reasons other than the actual arraignment of a defendant or disposition of the case by a judge. Cases are thus best understood as discrete interactions with clients in which legal advice and representation are provided.

The opening of new cases is a quintessentially practical exercise. New cases are 'counted' when they are opened as case files in either (or both of) a paper filing system or a computerized case management system. When a provider is required to report to ILS, or any other entity, how many new cases it opened in a given period, those files are the raw material from which the number is produced. Defenders are generally reactive agencies whose caseloads are determined by the actions of local prosecuting agencies. Counting practices are thus largely the product of how defenders receive and respond to case assignments and organize their files and their representation. Decisions on how and when to count cases reflect therefore reflect a mixture of administrative necessity and defender's discretionary decisions based on their understanding that certain acts of representation merit counting, while others are more peripheral, perhaps best seen as subordinate to a larger case, or even too small to count at all.

In this study, we sought to capture the practical constraints upon case counting and the normative practices of defenders around the state that result. Our objective was to ascertain whether a uniform set of definitions for counting cases could feasibly be implemented, to develop such a definition, and to identify resource needs among providers to implement that definition. Above all we sought to avoid one critical pitfall: the creation of definitions that would be impossible for providers to implement because the information required was simply unavailable.

Study Questions

We sought to study the case opening process in providers of representation around New York to answer three questions. First, could providers report to ILS their caseloads and other information needed for implementation of standards? We wondered how many providers had the ability to track cases in a computerized system that allowed for quick extraction of counts, and whether such systems actually contained all the information needed to categorize cases appropriately. In the findings that follow, we identify the deficiencies that would require remedy for providers to generate this information.

Second, what are providers actually counting when they count 'cases'? We wished to understand the administrative procedures extant within providers that surrounded the decision to open a new record within a provider's filing system that would represent a 'case' for counting purposes. Specifically, we were interested in the types and timing of events that would result in a legal matter being converted into an administrative record of a new case, available for counting. Factors such as the timing of the administrative decision on when a case should be opened, the ways in which co-occurring legal matters pertaining to a single client are separated into different cases, and the ways in which legal matters pertaining to a single client but occurring over time were separated into cases, were all of concern. Our hope was to be able to describe the practices providers had in place at the time we conducted our inquiry, to assess the degree of pre-existing consensus among those practices, and to judge whether it would be possible for those procedures to be changed in the event we published definitions that implied the need for changes in providers' practices.

Third, to what extent are providers' practices amenable to change? It was our intuition that provider counting procedures would be determined to some extent by extrinsic factors such as the manner of communication received from courts and the efficiency of information transmission between various other parties. If so, changing the manner in which caseloads are counted might be either very difficult or impossible. We sought to understand the obstacles to implementing changes in counting procedures

among providers, identify areas where support would be needed for that implementation, and also identify areas where change would be impossible.

Methods

We collected data by a variety of methods to answer our questions. First, we identified a random sample of eleven counties in which we sought to conduct interviews with every provider of representation regarding their case counting practices.[5] This part of our data collection was exploratory and took the form of semi-structured interviews, guided by a series of questions we compiled.[6] The questions asked providers to describe what events typically led them to open new cases in their system, how they would count cases in situations where a single client faced multiple legal matters, and how and whether they would open new cases for existing clients if new legal matters arose. By sampling randomly, we assured that the providers we spoke to were a representative sample of the state as a whole, including providers of all organizational types (public defender, assigned counsel, legal aid society, and others), and providers with both very small and very large caseloads. In total, we interviewed twenty-one of the twenty-three providers in these counties.[7] We also coordinated our research efforts with the *Hurrell-Harring* team at ILS which conducted similar interviews with the eleven providers in all five *Hurrell-Harring* counties and shared their data with us.[8]

Following these interviews, we went on to develop a survey instrument that included similar questions to our interviews, but in simplified form, asking again about when providers opened and counted new cases. To that survey, we then added a request for caseload data – specific numbers of new assignments received by the program in 2016 across the seven types of case. To assess how often respondents were unable to provide the information we requested, we allowed respondents to indicate if a number was unknown or had to be estimated. This survey was sent in August and September to every one of the 133 providers of representation in the state that we identified as having provided criminal legal representation to persons accused of crime but unable to afford a lawyer in 2016.[9]

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[5] We selected these counties using a systematic sampling strategy to obtain a random set of counties from an ordered sampling frame. In this case, the 52 counties of upstate New York and New York City constituted the sampling frame. We ordered them using expenditure data from lowest annual expenditures to highest. We then selected every fifth county for a total sample of eleven counties. This strategy assured that we sampled providers that were operating across the full range of circumstances prevailing across the state, from small programs with limited budgets to programs with budgets in the tens of millions. The counties (in alphabetical order) were Cattaraugus, Cayuga, Franklin, Fulton, Genesee, Hamilton, Nassau, Oswego, Rockland, Schoharie and Ulster.

[6] For the list of questions, see Appendix A.

[7] These interviews were conducted by Andy Davies and Alyssa Clark in the months of July and August, 2017. Most interviews were conducted in person, but three (Ulster County assigned counsel, Schoharie County assigned counsel and Hamilton County assigned counsel) were conducted by telephone. We did not interview the assigned counsel administrators in Cattaraugus and Rockland counties.

[8] We are grateful for the collaboration of ILS Senior Research Associates, Giza Lopes and Melissa Mackey, and *Hurrell-Harring* Caseload Relief Implementation Attorney Nora Christenson, who conducted interviews in the five counties that followed near-identical protocols to the ones we performed in our sample of eleven counties. We are further grateful for the assistance of those individuals in obtaining needed data on the caseloads, staffing, salaries and spending of providers in these counties which are incorporated into the analyses that follow.

[9] This survey was first distributed on August 17, 2017 to providers in upstate counties. New York City providers received the survey in September. Providers that had not responded by October 13, 2017, were sent the same survey in paper form on that date. Two additional copies were sent out in November when we learned the

On October 3, we issued a draft set of definitions for case counting which were largely based on the research performed to date. These definitions built on the insights of that research by stipulating rules for counting that we believed would be feasible to implement in all providers statewide, though some logistical adjustments would be needed in some places. We invited responses to the definitions by November 1, whereupon these were reviewed and the definitions finalized.

In addition, we reviewed data from providers responding to questions on a separate survey about their use of computerized case management systems.[10] We also analyzed data collated as part of our annual collection of caseload, staffing and resource information regarding each provider of representation in the state to identify providers that had specific difficulties in reporting data to ILS.[11] And we received unsolicited feedback from a number of counties which we incorporated into our findings where relevant. These data collection efforts are quantified in Table 2.

Table 2: Data Collection and Responses

Data Collection Strategy	Total solicited	Total responses
Provider interviews	23	21
Survey of caseload information and data entry processes[12]	133	75
***Hurrell-Harring* county interviews and caseload data collection**	11	11
Survey of case management system usage	126	95
Legacy ILS data tracking program	155	151

Findings

In this section we report what we found in relation to our three research questions, addressing the ability of providers to report data to ILS and procedures within those providers for producing and gathering those data. Throughout our reporting of results, we do not identify counties or providers by name. This is because we are interested in an aggregated and general picture of reporting capabilities across the state. Further, our sampling procedures were intended to assure that our findings would be representative of providers across the state in general, making the identification of individual counties and providers unnecessary.

originals we sent out had been misaddressed. A copy of the instrument, including instructions and other accompanying material, can be found in Appendix B. While a total of 155 providers of representation were active in 2016, eleven of these were located in the *Hurrell-Harring* counties and were excluded from this data solicitation. A further eleven provided mandated representation to adults in family court matters but provided no criminal representation, leading to a final sampling frame of 133 providers.

[10] This survey, known as the Quality Improvement Needs Assessment Survey, was sent out on May 11, 2017, with follow-up emails to providers as necessary to prompt their participation. This survey contained a variety of other questions regarding the need for quality improvement initiatives. Those data were gathered for a different purpose and are not reported or analyzed here. The relevant questions from the survey can be found in Appendix C of this report.

[11] These data support our 'Cost Estimate' reports which have been published annually since 2013 and are gathered in part from data supplied by providers pursuant to the requirements of NY County Law §722-f, and partly from direct solicitation by ILS through communication with providers.

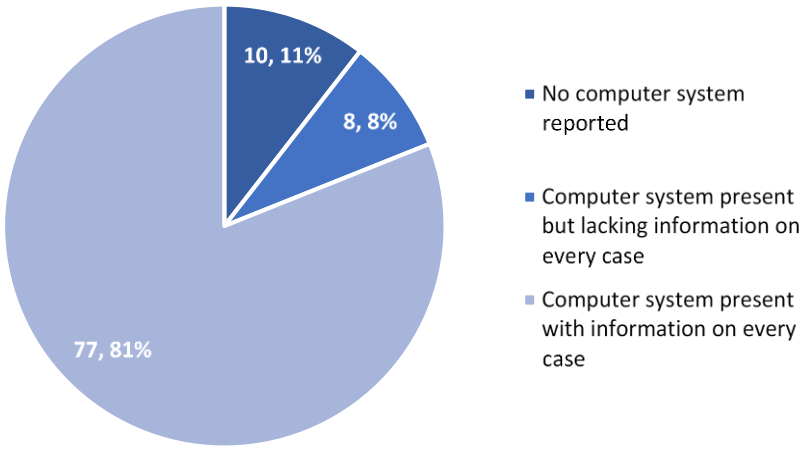
[12] Of these, 4 responses indicated it was impossible to supply the data we had requested and stated nothing further. Seven responses were in fact sets of answers collated by ILS from interview notes. The remaining 64 were responses received directly from providers.

Can providers report to ILS their caseloads?

When ILS requested information on the numbers of cases handled by 133 providers of criminal representation, it received a total of 68 responses. Among these, 64 contained usable data, but the number that included counts of cases in each of the seven categories was just 17 – less than 13% of providers statewide.[13] We sought to understand the challenges providers faced in supplying this information.

Our survey results suggested that computerized case tracking technology was relatively widespread among providers. 85 of the 95 providers (89%) that responded to our survey about case tracking technology indicated that they had some form of computerized case management system in place,[14] though only 77 of them (81%) all were recording information about every case (see Figure 1).[15] Most providers used either case management or electronic vouchering software, though 14 (15%) indicated they were using something else – most commonly a spreadsheet program such as Microsoft Excel. Of the 85 providers who reported some electronic recording of information, almost all recorded the type of case (whether felony, misdemeanor, appeal, etc.) and case disposition (81, 95% and 71, 86% respectively, see Figure 2), while many fewer recorded court appearances (43, 51%), motions filed (13, 15%) or client communication (7, 8%). While deficiencies exist, therefore, the technological infrastructure to count cases is relatively widespread across New York, and doesn't obviously account for the apparent difficulties providers had with reporting caseload information to us.

Figure 1: Presence and use of electronic systems for recording information (percentages are out of 95 total responses)

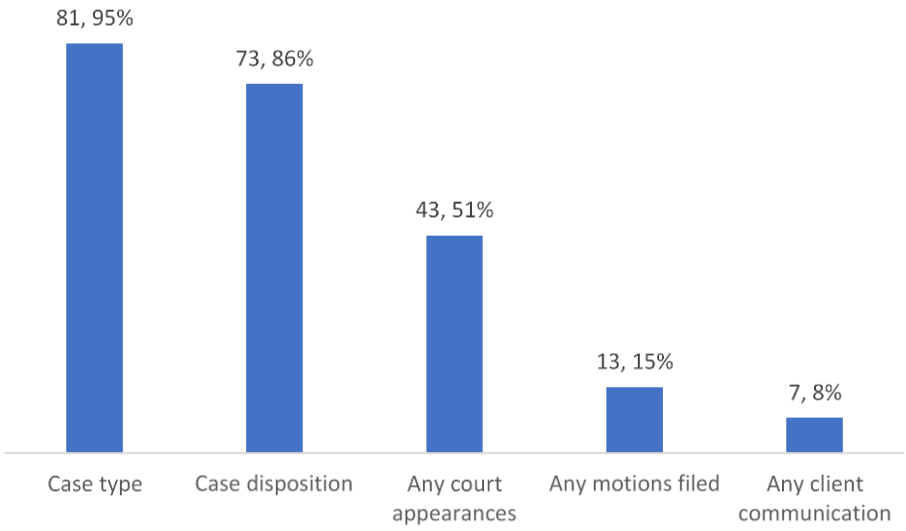


[13] This omits the *Hurrell-Harring* counties, where we obtained complete data from all eleven providers. As noted in Section IV, we were able to use a variety of techniques to overcome these deficiencies in the data we received to estimate needed resources for caseload relief statewide.

[14] We note, however, that assigned counsel systems were underrepresented among respondents (just 26 programs responded from among the 54 programs in the jurisdictions surveyed. Further, programs which lacked an administrator were almost absent from the respondents – predictably, since the survey was directed toward program heads, and these programs lack any person in a leadership role.

[15] Just five indicated they were not using such a system; one responded 'I don't know' and four left the question blank.

Figure 2: Extent of recording of specific case features in electronic systems (percentages are out of 85 responses where provider indicated use of a computerized system)



When we asked providers directly why reporting the data to us was difficult, they identified seven basic reasons ranging from a total lack of data availability to limitations in their abilities to use the data they had. First, some providers lack any internal administrative infrastructure at all. As one wrote:

> *We do not have an assigned counsel program... There is an assigned counsel panel comprised of individual attorneys who are willing to accept assignments in local town courts and county court. To my knowledge, there is no one who keeps the kind of data on caseloads standards that your survey seeks.*

This provider was not alone. ILS has significant experience attempting to obtain information from assigned counsel programs where no single person is responsible for collecting or recording information. These providers have little if any ability to capture or report the caseloads of their programs.

Second, providers may have internal data tracking infrastructures that are unsuited to the task of counting cases. In counties where the assigned counsel administration function is limited to payment of vouchers, providers are frequently more able to track the numbers of payments to attorneys than they are to count the number of cases in which those attorneys provided services. Voucher counts may be imperfect proxies for counts of actual cases where attorneys are permitted to request payment for multiple cases at once, for example, or can request 'interim' payments for lengthy cases.

> *The Assigned Counsel Plan…does not have a case management system but rather a vouchering system. The system collects only information that is relevant to payment (i.e., whether the case is a misdemeanor or a felony and how many hours the attorney worked on the case)….The entire payment system is under the control of [the Treasurer's Department]…. The [Treasurer] has not been authorized to proceed on the development of a combined case management and vouchering system.*

Some such providers did collect sufficient information on vouchers to infer counts of actual cases from voucher submissions – for example, by requiring attorneys to indicate the docket numbers of the cases

that they were billing for on the voucher in question. Others did not, however, and this capability was particularly uncommon among assigned counsel systems that had no dedicated administrator, leaving the processing of vouchers most commonly to the county treasurer's department (or other equivalent), which generally has a limited need to count cases at all.

Third, providers were not always informed of new assignments. This meant that our request, which specifically focused on the counting of newly opened cases, was framed in a way that made it impossible for providers in this situation to respond. In several of the assigned counsel programs which we visited, administrators were never informed of new cases until the point when the attorney submitted a voucher for payment; in others the administrator was provided with such information unreliably.

> *As far as my office works with Assigned Counsel, we receive the invoices for payment after the cases are complete. That is the only interaction with my office in terms of the cases of Assigned Counsel.*
>
> *Parole matters were the most difficult to find. My office is not always aware of them when the defendant's new charge/s are opened.*

Where reporting of new cases is unreliable, the administrator is not able to produce counts of 'new cases' for a specific period until they are satisfied that all cases assigned have been closed (something that it is not strictly possible for them ever to know). In this situation, they are left only with the ability to report retrospectively on caseload numbers, and then only with the data provided to them at point of closure. This brings other complications, since cases are occasionally consolidated at the point of closure (as, for example, where charges in one court are 'dismissed in satisfaction' as a result of a plea deal reached on a separate set of charges) meaning that a single voucher may reflect the disposition of multiple cases. While systems could be designed to overcome this obstacle for the purpose of retrospective reporting (indeed, we learned of several that already track enough information to do so), the absence of such systems at present compromises providers' abilities to report caseload totals accurately.

Fourth, some providers had no central data repository, or none from which data could readily be extracted. In one, a provider tracked information in a central database on every felony case, but did not track misdemeanor cases individually, instead requiring attorneys to report monthly assignment totals. In others, providers were still using word documents, handwritten notebooks, or other systems that simply were not designed for quick and efficient data management and the extraction of counts of cases. The absence of systems with the capability of speedy data extraction significantly increased the work required to report data to us, and in some cases prevented it altogether.

> *In order to compile the information that was required…I reviewed the 2016 assignments for…County Court and the various Justice Courts…on a monthly basis and then totaled the monthly amounts. My administrative assistant keeps folders for every month. I physically inspected our paperwork for each assignment and determined from the charges against each defendant whether the most serious charge was a violent felony, another felony or a misdemeanor/violation. A software program that would make it easier to track cases and obtain information about closed cases would be beneficial.*

The information is very difficult to provide. Adopting a Case Management System will greatly increase the ability to track these cases.

Fifth, some providers lacked the ability to exploit their computerized data tracking even where it existed because of limited staffing, expertise, or training in how to use the system. Several providers indicated that present staffing levels were either insufficient to enter data on all cases, or insufficient to guarantee that data entry was consistent and accurate. Similarly, several providers expressed to us that they simply didn't know how to generate counts of cases in the format and approach we were requesting.

We have historically had issues with data integrity and consistency in data input as we have a number of different staff members who interact with the case management system. Because of these issues, data is not always input in a consistent manner, making it difficult to track later…. I believe that in order to accurately report these caseloads we would not only need a cleaner and more user-friendly database, but would also need additional training and oversight for much of our clerical staff.

Our current CMS requires manual input of charge codes at the time of opening the case. This necessarily results in some human error in collecting the types of cases.

In addition to developing a combined case management and vouchering system, there would also be a need for staff that is trained in both data analysis and indigent defense. Right now, I am the only employee of the Assigned Counsel Plan other than an assignment clerk. Neither of us have the capability to run queries in databases to obtain information.

In the absence of additional staff or training, generation of accurate caseload counts will continue to be a challenge.

Sixth, even providers with good internal tracking systems faced problems because their software packages did not have the flexibility to produce the needed data in the correct format. Providers indicated that additional work with software developers, and in some cases purchase of new, alternative software, was required to create that capability. Existing tracking systems often did not allow providers to distinguish violent from non-violent felonies, appeals of verdict from appeals of guilty pleas, and post-disposition cases, for example.

The…system does not keep track of the numbers you are requesting…. I looked at the UCS-195 for 2016 and then ran a parole case list for the year 2016 to provide you with the numbers.

Unfortunately, at this time we do not track post-disposition cases at all…

At this point it is difficult to distinguish what a client is appealing (guilty verdict or plea) through our case management system.

Prior reporting requirements did not separate out violent felonies from non-violent felonies, so we are in the process of updating the CMS to reflect this reporting requirement. Consequently, the number of violent vs. non-violent felonies is an estimate.

Providers need to be allocated sufficient funding to allow them to work with software developers to incorporate these new capabilities for data tracking and reporting.

Seventh, it was not uncommon that certain types of representation were not tracked at the case-level at all, preventing counts of cases from being generated. We found this to be quite common in two particular situations – CAFA representation and specialty court representation – in both of which attorneys were sometimes assigned not to individual cases, but instead to cover specific courts or on-call shifts. In these situations, where the attorney's responsibility was to provide representation to all defendants who needed it during a shift, often with no expectation that he or she would continue to represent the client(s) later, individual cases were not always tracked. Rather, tracking would begin when some other threshold was passed, such as the assignment within the office of the case to a particular attorney, or (in the specialty court context) a violation was alleged. As a result, there was sometimes no detailed record of representation conducted (and sometimes no record at all), and case counts from such programs omitted this work.[16]

What are providers actually counting when they count 'new cases'?

For our purposes, the counting of a new case occurs when a provider creates a record – whether on paper or in a computer – that will subsequently be countable when they are asked to report how many new cases they opened in a given period. We were concerned to ask providers what circumstances occasioned the opening of a new case.

We learned of three important decision-points for case opening where procedures varied. First, in the handling of new assignments: some providers open a case immediately upon meeting a client while others wait until conflict-of-interest and eligibility determinations have been made. Second, distinguishing 'cases' from sets of charges or changing instruments was important: some providers counted all charging instruments as separate cases, while others consolidated them if they referred to the same incident. Third, handling new legal matters for existing clients made a difference: clients accused of violating the terms of probation, for example, might be treated as new cases, or as a continuation of the old one. Last, we also learned about situations where providers would record as cases advocacy that was not presently captured in our caseload standards.

First, regarding when a provider opens a new case, our interviews and surveys revealed that while some providers did so immediately, others did so only after confirmation the client was financially eligible to receive services and no conflict of interest existed.

> *We open a case once we are assigned or our services are requested, provided there is no conflict. We do not count cases that go out as conflicts. We attempt to check conflicts, eligibility as soon as we are assigned or requested to represent.*

[16] Not pertinent to counting abilities, but nevertheless worthy of note, is the fact that in the course of our research we discovered that the scope of representation offered by providers in specialty courts differs substantially from place to place. Some providers attend all specialty court status conferences and may even represent defendants whose retained attorneys do not appear with them (and may count such representation as distinct cases); others decline to extend this favor. Still others will only attend status conferences at all if they are forewarned that a client is likely to be accused of violating the court's terms; among those, some will assign the case to the original attorney while others will not. These different practices have some relatively consistent implications for case counting: providers that represent clients throughout the period of specialty court generally tend to count the case as a single matter, whereas providers which end representation at the time of the referral to the specialty court and assign representation on violation matters to new attorneys often count that violation representation as a separate case.

After Arraignment, the Local Court will fax the charging documents; depositions; court information; etc. and the Defendant's Application for Services to this Office. On the next business day, the Application will be reviewed for eligibility and checked for Conflicts. If eligible, a case is opened and an Attorney assigned.

We open a file even if there IS a conflict – a conflict letter stating the conflict which is sent to the assigning Judge. Once we receive a letter from the Court relieving the office of the conflict, we then close out the case in PDCMS outlining the conflict and if the Judge had granted the relief and who was assigned from 18-B.

In appellate cases, too, the timing of case opening could differ. One provider noted it would only count a new case after an order of assignment was received from the Appellate Division; another indicated a case would only be counted after the case had been both assigned and perfected.

These differences were often a product of differences in the administration of case assignments within the county. Where providers operated as 'clearinghouses' for all cases in a county (receiving all cases, and then passing on those where they discover a conflict) it was typical to count all such cases among the provider's caseload notwithstanding they would not ultimately represent them. Where case assignments were administered by another entity, however, such as an assigned counsel administrator or the courts themselves, providers typically received and counted only cases in which they would provide representation. Some of this diversity may be valid – in the event clearinghouse providers are supplying at least some advice and representation to clients, for example – though there may be a danger of over-counting of cases where defendant clients are subjected to little more than an administrative reassignment to a new provider.

Second, regarding the combination of charges into cases, we asked providers whether their current practice defined a case as "one or more charges against a single defendant originating in a single court contained in a single charging instrument." Of the forty-nine responses to the question that we received, forty-four (90%) either flatly indicated the definition matched their practice, or described a practice that was not substantially different. In the latter group, one described their definition as based on 'time and date of offense', but noted that in sealed indictment cases (that is, a case where several offenses might be charged in a single instrument) they would generally open only one case. Another defined a case as 'all charges against a single defendant in a single court', and yet another noted they counted by 'court and attorney, not time and date'. Generally these alternative wordings were not clearly incompatible with the definition we proposed. During our interviews, where we had the opportunity to inquire further into what people meant when they articulated these definitions, we also inferred providers were in broad agreement.

The remaining five responses all issued the same caveat with regard to the 'charging instrument' in the definition, however, noting that where prosecutors opt to split a set of charges pertaining to a single incident into two separate charging instruments, the defender will typically count them as a single case.

We would open one case even if there were multiple charging instruments against a single defendant originating in a single court arising from the same incident or criminal transaction. Basically, if all charges would result in a concurrent sentence, [it's] one case

Our office defines a case as all charges arising from the same transaction or occurrence--this does not always happen with a single charging instrument.

…[O]ur definition of a "case" could include multiple "charging instruments" (each charging a felony; misdemeanor or a violation). If they all arose out of the same incident, they would be included in one case. One Indictment with multiple counts is treated as one "case" while two Indictments are treated as two "cases".

In practice, there are numerous occasions where a single defendant will be charged under two dockets for related conduct that happened as part of a single occurrence. This is unnecessary and confusing…

One provider issued a note of caution about the consolidation of such instruments into cases, however:

[T]he charging documents/incident reports should be counted separately because the D.A. has the choice and authority to track/try, or proceed with each incident report.

Our research suggested that this 'charging instrument' distinction is largely a product of local prosecutorial practice: in some places, charges arising from single incidents may span multiple instruments, whereas in others it is the custom to consolidate them.

Third, regarding the opening of new cases in situations where an existing client encounters a new legal matter, we asked a series of questions regarding providers' present practices in an attempt to discover where some pre-existing consensus existed on this matter that could inform our definitions. We asked providers about a variety of situations and whether they opened a new case or not.[17] In Table 3, we distinguish below situations where most providers (80% or more) indicate they do open a new case from those where 80% or more indicate they do not. We then list situations where provider responses are more mixed. We also distinguish assigned counsel from institutional provider responses in recognition of the differences in the administration and counting procedures that frequently exist between such providers.

Table 3: Responses to the question: "Do you open a new case when…"

Situations where over 80% of providers DO open a new case

A client is rearrested on a new offense

	Assigned counsel	Institutional providers	TOTAL
Yes	12	40	52
No	1	2	3

A client is accused of violated the terms of their probation

[17] We had a total of 86 responses to these questions. These responses were a combination of 68 responses to our written survey, 11 responses from providers in the *Hurrell-Harring* counties researched and shared with us by the *Hurrell-Harring* team at ILS, and a further seven responses gathered by us in person through interviews. The numbers in the tables do generally not sum to 86. This is because survey responses are missing for a mixture of the following reasons: (a) the respondent provided appellate representation only and the questions were not applicable to them; (b) some providers indicated they did not know the answer; (c) the question was left blank.

	Assigned counsel	Institutional providers	TOTAL
Yes	13	41	54
No	4	6	10

Situations where over 80% of providers do NOT open a new case

A client previously found incapacitated because of mental disease or defect pursuant to CPL 730 is found fit to proceed on a felony case

	Assigned counsel	Institutional providers	TOTAL
Yes	3	4	7
No	11	35	46

A client is returned to court on a bench warrant

	Assigned counsel	Institutional providers	TOTAL
Yes	5	5	10
No	11	42	53

A client enters a specialty/treatment court program (e.g. drug court)

	Assigned counsel	Institutional providers	TOTAL
Yes	2	2	4
No	14	40	54

A client is accused of failure to complete a treatment program

	Assigned counsel	Institutional providers	TOTAL
Yes	3	4	7
No	11	37	48

Counsel in the case changes to another person within your office or program

	Assigned counsel	Institutional providers	TOTAL
Yes	6	2	8
No	11	44	55

Situations where providers vary

A client is accused of violating conditions of a Conditional Discharge

	Assigned counsel	Institutional providers	TOTAL
Yes	12	29	41
No	5	16	21

Charges in a case are severed

	Assigned counsel	Institutional providers	TOTAL
Yes	3	15	18
No	11	25	36

A client seeks modification of a sentence

	Assigned counsel	Institutional providers	TOTAL
Yes	7	17	24
No	9	28	37

A client is accused of violating conditions of an ACD, resulting in return of ACD to court calendar?

	Assigned counsel	Institutional providers	TOTAL
Yes	9	17	26
No	8	28	36

A client is accused of failure to pay a fine

	Assigned counsel	Institutional providers	TOTAL
Yes	7	16	23
No	10	28	38

<u>Are providers' practices amenable to change?</u>

In addition to respecting any pre-existing consensus on case counting practice, we also asked providers about how easy it would be for them to adapt existing case counting practices in this area to comport with different definitions. Essentially, the questions were two: in the event providers do not presently record new cases for new legal matters arising, could they do so if they had to? And secondly, in the event providers at present do distinguish sequential legal matters as different cases, but ILS required that such matters be regarded as singular, would it be possible to adapt reporting procedures to that definition as well?

Where providers were not counting cases as distinct matters, we learned that it would generally be possible for them to do so after some retraining of staff and reconfiguration of case management software. Counting additional cases where none are presently counted is a matter of changing procedures to open files in response to different triggering events. Indeed, we found that several providers were anticipating the implementation of ILS caseload standards by changing their counting processes. As one commented "we can do it however you want."

The situation is a little more complicated, however, when asking a provider that presently distinguishes matters as separate cases to recombine them. Recombination fundamentally requires some way (often through the use of a 'Case ID' number) through which records can be cross-referenced and linked. We note that our survey responses suggest that the tendency to count new cases may be slightly more common in assigned counsel programs: to take just one example from Table 3, 30% of assigned counsel

programs responding to the survey count cases returned on a bench warrant as new cases, whereas just 11% of institutional providers do so. We spoke with many assigned counsel programs across the state about their ability to recombine these diverse vouchers into single 'cases' for counting purposes, and encouragingly discovered that many had some kind of case numbering system that would allow for recombination. Some did not, however, and only kept records of legal matters which were entirely separate from one another and do not allow recombination after the fact. Complicating this picture, we also learned that in some assigned counsel programs the idea of requiring attorneys to supply additional information that would allow recombination of cases (such as docket numbers) was considered problematic for the reason it might alienate assigned counsel, especially in circumstances where the assigned counsel program in question would not allow attorneys to bill for time spent filling out required paperwork. We also discovered that some providers are at the mercy of inconsistent approaches among courts, with some allowing attorneys to bill for their services when a client had a bench warrant issued and some not allowing it.

Where providers were advanced in their tracking of cases, we learned that they often also had the flexibility to count cases in several ways. One appellate provider had one system for recording cases prior to assignment – when helping a prospective client with an application for poor person relief, for example – but another way to count them if an assignment occurred. Another public defender opened cases for clients seeking advice even in the absence of an assignment from a court ('Advice-only' files) but indicated it could easily deduct these from their case counts to comply with ILS definitions if needed. Still another kept a record of appellate cases which were assigned out to a contractor in the county, but could deduct these counts from its reported numbers. The sophistication of tracking systems themselves, therefore, appeared to be related to providers' ability to report data, and to be flexible in how they did so.

<u>Cases not weighted under the standards</u>

We inquired of providers what other work they counted but was not captured in our caseload standards. 22 providers enumerated this work for us, reporting a total of 1,847 matters not weighted by the standards. These same providers reported a total of 131,548 felony and misdemeanor cases alone, suggesting that the number of uncounted cases as a percentage of trial caseload counts is around 1.4%. The types of cases providers mentioned as unweighted included SORA classification or reclassification, motions under NY CPL 440, extradition or fugitive matters, parole appeals, Mental Hygiene Article 10 cases (civil commitment of sex offenders), and 'material witness applications'. Other types of cases reflected the breadth of practice of the provider: 'community intake' cases of clients who come to a provider looking for advice, 'investigations' of cases where no charges were pending, collateral proceedings where the proceeding may implicate a client's rights in the criminal case, and other idiosyncratic, though no doubt labor-intensive, work.

Distribution of Definitions, Feedback and Revision

Following the conclusion of the research reported above, we created a draft set of definitions for case counting taking into account what we had learned about the ways cases were counted at present, and the scope for flexibility and change in those practices. We distributed the draft on October 3 and received several responses from providers around the state suggesting revisions. Although no response indicated that the definitions as drafted would be impossible to implement, several took exception to

certain parts of the definitions which conflicted with prevailing norms across the state on how cases are typically counted. Those points of objection are reported below, and ILS' response to them noted.

The draft definitions stated that specialty court proceedings should each be counted and weighted separately as 'post disposition' matters. We included this consideration based on what we had heard from providers about the additional workload such cases involved, and also occasional reports that specialty court representation was already treated as a distinct function within some programs.[18] Providers responded that they were not convinced specialty court proceedings should not be counted separately from the underlying case, and moreover that the extent to which such representation was actually provided varied substantially across the state. Whereas one provider opined that "providers should be appearing with their drug court clients at every appearance, and not just appearances where there may be sanctions," for example, another stated explicitly that their practice was the opposite: "[w]e do not have anything to do with the client in drug court, unless there is a violation and then a new file is opened." We were also made aware of the considerable differences in how drug courts are organized, such that in some referral happens quickly whereas in others it happens at the later stages of the case. We therefore dropped the separate weighting of specialty court proceedings pending further study.

We had also included in the draft definitions instructions to count as post-disposition cases Adjournment in Contemplation of Dismissal cases returned to the court's calendar and matters in which a client sought to modify their sentence. This was an attempt to reflect the fact that these cases represented work that went above and beyond the typical services provided to clients facing trial. However, providers indicated first that ACD cases were both very uncommon and, often, insufficiently distinct from the original matter to be considered as separate cases. Matters in which clients sought a modification were also recommended to be unweighted, partly because these are matters in which the right to counsel may not attach. We therefore dropped the weighting of these proceedings also.

The draft definitions all called for separate counting of cases in which a break in representation of over 90 days occurred due to the issuance of a bench warrant or a period of incapacitation under CPL §730. This was added in recognition of the fact that cases in which a period of hiatus or inactivity occurs may be administratively closed by some providers making recombination complicated, and further that lengthy periods of inactivity may effectively require attorneys to rework a case from scratch when the client is returned to court. Providers reported (and our survey results in Table 3 confirmed) that it was not common practice to close these cases, however, and indeed that such cases may not be 'inactive' at all. Moreover, they noted that the client's absence from court should not be taken as an indication that the case had ended. We therefore dropped the separate counting and weighting of these cases from the definitions.

We clarified language in the definitions around the onset of representation in both trial and appeal cases (when legal advice and representation are offered; and in appellate cases other than direct appeals, only where leave to appeal is granted). We also clarified that 440 motions and habeas corpus matters could be counted, but only in the event an attorney is assigned to a case or actually files a 440 motion.

[18] Our survey findings in Table 3, however, suggest the opposite, that

Providers also cautioned that the existing weights insufficiently distinguished types of 440 motion, inappropriately weighted cases in which a client was alleged to have failed to pay a fine, insufficiently distinguished circumstances in which cases are retried, did not account for a variety of parole-related proceedings, and inappropriately did not make distinctions between SORA proceedings at point of sentence and those at point of release from prison. We did not make significant changes in response to these responses, and instead reserve them for future study. We did not feel we had sufficient basis to subdivide and reweight 440 cases. While recognizing that 'failure to pay a fine' cases vary in the burden they impose, counting them as post-disposition cases similar to others in which a client was alleged to have failed to abide by the conditions of his or her sentence seemed appropriate and necessary. While we recognized retrials may differ in their burden depending on the stage at which they occur, we also thought that such proceedings are invariably burdensome enough to merit separate counting. Parole matters beyond defending a client against an alleged violation either do not require assignment of counsel, or (as in rescission cases) are best regarded as a component of an underlying case. SORA proceedings, meanwhile, we concluded are sufficiently consequential to merit separate weighting regardless of the timing and context of the proceeding in relation to the underlying criminal case.

Conclusions

Our research suggested that while providers differ in certain details about case counting, significant consensus exists around certain key issues such as the grouping of charges into 'cases'. Moreover, with few exceptions, providers appear able to adapt their case counting practices to comport with new definitions when necessary, given adequate support. That said, we recognize the need both for flexibility in the case definitions we produce, and for adequate support for accurate caseload reporting within the planned funding distribution to counties.

Regarding the case definitions, we concluded they must:

- Reflect existing consensus on how caseload counting is already done where possible and appropriate.
- Not impose requirements that are impossible for providers to implement and adapt to.
- Not require providers to report information that is not, and could not be, available to them.
- Allow flexibility in situations where counts of newly opened cases are, for administrative reasons, impossible for providers to report.
- Make clear how cases handled only briefly by attorneys working 'on call' or covering certain courts should be counted.
- Define the onset of a case in such a way that neither counts situations where a provider did not provide any representation, nor fails to count situations where legal advice and representation were offered.
- Define how charges are consolidated into cases, considering that where multiple charging instruments refer to a single alleged incident it is common to consolidate these, but also leaving scope to count separately multiple prosecutions arising from a single incident.
- Allow for the creation of new case categories where appropriate for matters not presently captured under the standards.

Regarding our plan for the implementation of caseload standards, we recognized funding must be made available to providers to:

- Implement needed changes to administrative procedures that would allow them to track sufficient information to allow for case counts compliant with the definitions.
- Build basic administrative infrastructure that will allow data tracking to commence.
- Obtain case management software.
- Work with software developers to enhance their ability to track data.
- Employ administrative support staff to perform data entry.
- Train staff in data entry and the use of case management systems.
- Change internal administrative procedures for case tracking.
- Compensate attorneys for completion of paperwork necessary to ILS reporting requirements.

ILS should study in greater detail the following matters:

- Appropriate weighting of cases not yet counted under the standards including extradition or fugitive matters and Mental Hygiene article 10 cases.
- Appropriate weighting of collateral proceedings where the proceeding may implicate a client's rights in the criminal case, particularly the right against self-incrimination, including DWI refusal hearings, CPS investigations and/or hearings, school suspension hearings.
- Appropriate weighting of cases in which assignment of an attorney is for arraignment purposes only.
- Appropriate weighting of specialty court, sentence modification, and returns of ACD cases to court calendars.
- Appropriate weighting of cases in which a period of inactivity occurs (such as where a client has absconded or is incapacitated).
- Weighting of 440 motion cases, failure to pay a fine cases, retrial cases, parole matters other than parole violation cases, and SORA proceedings.

SECTION III: Caseload counting definitions

This section contains the reporting requirements for caseload data transmitted to ILS pursuant to 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 stipulate when cases should and should not be counted and facilitate the implementation of the caseload standards issued by ILS in December 2016. Nothing in these standards should be taken to contradict the rules of confidentiality pursuant to the *Hurrell-Harring* settlement, the ILS eligibility standards, or the rules of professional conduct, which apply regardless of whether a case is opened or counted by a provider.

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. However, nothing about these standards should be construed to mean that the manner of counting laid out herein is more 'correct' than any other. While ILS must require that providers report data according to certain uniform rules as part of its responsibilities under caseload standards implementation, providers have historically developed locally appropriate counting procedures for a wide variety of good reasons, ranging from simple administrative parsimony to the technical demands of contracts, local reporting and accountability requirements, or data sharing. Clearly, definitions can and should differ for counting purposes for many good reasons, even to the point that individual providers might legitimately maintain separate counts, reflecting separate totals, of the same caseloads, simultaneously, for different purposes. Nothing about these procedures should inhibit providers from continuing to record, analyze and report data in ways that are appropriate for different audiences, circumstances and requirements as needed.

When devising the reporting rules that follow we relied heavily on what we had learned about existing conventions around the state for counting. Where existing practices were already close to consensus – as, for example, in the matter of recording violation of probation matters as separate cases – we tried to follow those conventions. Where existing practices were not at consensus – as, for example, on the matter of when case files are first created, or the recording of failure to pay fine cases – we tried to create definitions that could feasibly be implemented with the minimum amount of reorganization of administrative procedures in the providers we met with. At the same time, we also sought to be guided by normative understandings of appropriate and logical decisions where necessary, to avoid being guided astray by counting decisions made 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, such as asking assigned counsel providers to supply information on assignments not known to the program administrator. We sought to devise rules that providers could adhere to through the use of information that, while it may not be recorded at present, is at least available to providers when creating new case records.

Definitions for Use in the Counting of Criminal Cases when Reporting to ILS

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.

SECTION IV: Budget needs by county

In this section, we calculate the cost of compliance with caseload standards in every county in New York covered by the 2017-18 budget legislation. To do this, we employ a variation of a method that ILS pioneered in a series of reports known as our *Cost Estimates*.[19] In these reports, we use caseload information from providers around the state to estimate the amount they need for caseload relief. These reports and the metrics they contain remain a valuable barometer of the health of the defense function across New York, but the caseload standards on which they were based became obsolete in December of 2016 when ILS issued standards that, unlike the previous ones, were both New York-specific and were based on empirical study.[20] In what follows, therefore, we follow the same approach as in our prior *Cost Estimate* reports, but apply the new caseload standards rather than the old ones in order to perform our calculations.[21]

We describe below how we sought data from all providers in the state on their caseloads and other relevant matters. We note the obstacles we confronted – including the limited capabilities of providers to produce information – and how we overcame them. We describe the assumptions we made in our computations, including steps taken to avoid overstating provider needs for caseload relief. We also consider strategies to assure that providers and ILS have the capability to exchange reliable caseload data in the future. Ultimately, we present a list of funding needs for individual localities and ILS.

Analytic plan

The calculation of funding needs for caseload standards compliance requires information on at least two things: a provider's caseloads and the resources they have at their disposal to handle those caseloads. Additionally, some strategy for estimating the cost of remediating any shortfall in resources is needed. In the past, we have relied on information submitted by providers and county governments on their caseloads, expenditures and staffing, in addition to other information, to estimate funding needs. These methods are described in detail in the first of our *Cost Estimate* reports.[22]

Recognizing that implementing the new standards would impose demands for data that many providers could not meet, we planned to solicit two sets of caseload information from them. First, we planned to request what we came to call 'old style' caseload information. The request solicited old style data in the same format that providers have customarily submitted it, distinguishing five categories of case (three trial-level criminal case types, one family court number, and one appellate caseload number). Our prior experience with obtaining old style data made us confident we would be able to get them from most providers in the state. This would make sure we had at least some information on the caseloads, staffing and resources of every provider in the state, albeit not data that were formatted to allow application of the new caseload standards. Second, we also planned to solicit "new style" data in a new

[19] For the complete set of these reports, see https://www.ils.ny.gov/content/research-and-data-analysis.
[20] See *supra*, note 1.
[21] This approach, while a variation on that taken in prior *Cost Estimate* reports, is the same approach used to allocate caseload relief in the *Hurrell-Harring* counties. Accordingly, the amounts of relief allocated to counties in this report is equivalent to what they would have received had they been beneficiaries of that settlement.
[22] See pages 10-14 of our November, 2013, report *An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York*, available here: https://www.ils.ny.gov/files/Estimate%20of%20Upstate%20Cost%20Of%20Compliance%20Report%20Nov%202013%20Executive%20Summary.pdf.

format, whereby providers would break out their criminal caseloads into seven categories as stipulated under the new caseload standards.

Where providers supplied both sets of data, we planned to calculate their needs under both the new standards under the old standards. We would then compare the results to find how much difference applying the new standards made to our calculations of provider needs. For providers supplying *only* the old style data, we planned to calculate their needs using those data and then adjust the result in proportion to the difference we observed in programs that supplied both sets. In this way, we would be able to estimate need in these providers also, thus producing a full, state-wide data set of empirically-grounded funding allocations for every county.

Data collection

For many years, providers of representation across New York have been under an obligation to 'file an annual report with the judicial conference'.[23] That reporting obligation, which takes the form of a report known as the UCS-195, requires all providers across the state to submit aggregate counts of the cases handled in the previous calendar year, distinguishing counts of homicides, felonies, misdemeanors and violations, and family court cases. Space is also left to report appellate work. By taking these data, as well as data from annual county financial reports, and supplementing them with our own requests to providers for information about staffing and any omitted or unclear information, we have historically been able to project caseload funding needs across the state.

We sought these data this year in the same way as years past. Historically, this strategy has proven rather successful, albeit labor-intensive. The rate at which providers of representation have reported to us complete, analyzable data across the four years in which we have produced *Cost Estimate* reports has ranged from 96% to 100%. Several things help to assure this was true. First, we exploited data that providers were already submitting. Second, the data request themselves were intentionally minimalist: at most, we required a total of eight numbers (five counts of different case types, two counts of staff, and one count of spending) from each provider to compute their needs, and in many cases we required fewer. Third, providers have over the years become used to submission of the UCS-195 form and ILS' predictable follow-up, and many have developed systems for automating and anticipating the information needed to fulfil both requests. And fourth, though more speculatively, ILS has sought to build relationships with providers that are mutually trusting, allowing greater candor and responsiveness to requests for information.

The new caseload standards produced by ILS increase the amount, and change the nature of, the data that ILS must request from providers in several ways. Most conspicuously, the new caseload standards laid out separate weights for seven types of criminal cases rather than the previous four, requiring caseload totals to be broken out in new ways. Additionally, by focusing exclusively on criminal representation, the new standards required us to obtain data pertaining only to the criminal court practice of providers, including not only their caseloads but also the resources and staffing dedicated exclusively to criminal court representation. Most providers of representation have a mixed practice of criminal and family court work, and the split in personnel and resources between the two is not always clear.

[23] See New York County Law §722(f).

Our request for new style data asked for not eight but thirteen distinct numbers: eight counts of different types of cases, two counts of extant staff, one count of expenditures, and two numbers reflecting the average total cost to the program of employing an attorney and a non-attorney respectively (salary and fringe combined).[24] All thirteen numbers were to refer only to the criminal side of the practice within the provider.[25] We sent out a survey in August and September, 2017 to all providers in the state which, in addition to asking about case counting practices, requested the new style data.[26] The survey was re-sent on October 3 to providers from whom we had not received a response, with two that were returned undeliverable being sent to corrected addresses in November. We also sought and received the same caseload information for all providers within the *Hurrell-Harring* counties from the *Hurrell-Harring* team at ILS. We realized (and later confirmed) that it was not likely that we would be able to get the same level of response to our request for this new style data from all providers across the state as we had in our request for old style data.

Method

The *Cost Estimate* method employs two parallel analytic strategies to calculate caseload funding needs in institutional providers and assigned counsel respectively.[27] This year, in addition, the method differed slightly depending on whether a provider had submitted both old and new style data, or only old style data.

For institutional providers, the method is to compare the provider's caseloads to the standards to identify the numbers of attorney and non-attorney staff that would be required to handle the caseload. By comparing those numbers to existing staffing levels, staffing shortfalls are identified. The cost of hiring additional staff is then computed. Where providers submitted only old style data, regional survey data on average salaries were used for this.[28] Where providers submitted new style data, the

[24] The eight case types were the seven specified in the caseload standards (violent felony, other felony, misdemeanor and violation, post-disposition, parole violation, appeal of a guilty plea and appeal of a trial verdict) and an 'other' category for representation not captured in the categories of the standards. For assigned counsel providers the staffing and salary numbers were not required. For the survey and accompanying instructions and background materials, see Appendix B.

[25] The instructions for the survey regarding spending read "Spending should be for 18-b representation only and should include spending for attorneys, non-attorneys, and all other costs related to criminal representation." For staffing, the instructions indicated, in part: "For staff who maintain a caseload of *both* criminal and non-criminal cases (for example, they provide representation to parents in family court matters as well as representing criminal defendants) we ask that you quantify how much time they spend on each." See Appendix B for the full instructions to providers on how to report criminal-side-only spending and staffing.

[26] See above, note 9.

[27] For more details see *supra* note 22.

[28] The National Association for Law Placement's 2012 *Public Sector and Public Interest Attorney Salary Report* (NALP, Washington DC) indicated that public defenders with one year or less of experience were paid an average of $51,521 in the North-East United States. Attorney salaries across New York increased by 6.1969% between 2012 and 2016 (according to Bureau of Labor Statistics data found here https://www.bls.gov/oes/current/oes_ny.htm, accessed 10/19/17) so we infer average salaries of starting attorneys is likely now approximately $54,714. For non-attorney staff we averaged, as before, the 2016 salaries of paralegals (occupation code 23-2011, $59,300), private investigators (occupation code 33-9021, $63,260), and administrative assistants (occupation code 43-0000, $42,220) for an estimated non-attorney salary of $54,927 (May 2016 State Occupational Employment and Wage Estimates, New York, https://www.bls.gov/oes/current/oes_ny.htm, accessed 10/19/17). As in previous years we then estimated the

information they supplied on the average salary and fringe rates for staff members in the agency were used, with additional consideration for office space and equipment for each hire. The total cost of these additional hires is taken to represent the provider's unmet funding needs.

For assigned counsel programs, the method first computes the total amount that the standards imply should have been spent to provide representation in all cases reported. The is done by multiplying the number of cases by the minimum average number of hours each case should have taken and the statutory rates for compensation ($75 an hour or $60 an hour in misdemeanor and violation cases)[29], and adding in consideration for non-attorney support. The result is then compared to the total spent by the program to identify whether a shortfall occurred. The size of the shortfall is assumed to represent the program's unmet spending needs to comply with caseload standards.

Analysis

We sought old-style data from all 155 providers of representation active in the state in 2016 immediately following the May 2, 2017, meeting in Albany to kick off the statewide expansion of the *Hurrell-Harring* reforms. We referred to UCS-195 forms provided to us by the Office of Court Administration on July 18 to obtain basic caseload information. We also referred to county annual expenditure reports, provided by counties directly to ILS, which recorded details of expenditures on each program. We then contacted each program directly to fill in any missing information, and also (in the case of institutional providers) to ask about their staffing levels. In this way we were able to obtain complete data for all but four providers, of which just two were providers of criminal representation.[30] We substituted 2015 data for the missing programs.

In August and September of 2017 we sent out a request for new-style data to all providers in counties not covered by the *Hurrell-Harring* settlement, repeating the request in hard-copy on October 13 for non-respondents.[31] The *Hurrell-Harring* counties, meanwhile, received the same solicitation from the *Hurrell-Harring* team. We received a total of 75 responses to our survey, and data for all eleven *Hurrell-Harring* county providers, for a total dataset of 86 providers.[32] However, only 17 of these responses contained all thirteen numbers necessary to the computation of provider need, with all others missing

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cost of fringe benefits at 52%, and for non-attorneys at 70%, using the Bureau of Labor Statistics publication *Employer Costs for Employment Compensation - June 2016*, https://www.bls.gov/news.release/archives/ecec_09082016.pdf, Table 3 (accessed 10/19/17).

[29] In the analysis that follows, one category of cases ('post-disposition' cases) in an ambiguous mixture of cases that would be compensated at the felony and misdemeanor rates. Representation in violation of probation cases, for example, would be compensated differently depending on the underlying charge, though all such cases would be classed as 'post-disposition'. We therefore apply an hourly rate at the midpoint of these two figures – $67.50 – to these cases.

[30] Accordingly, our response rate this year was over 97%, or 98% if family court providers are excluded. Missing programs were one Columbia county contractor who stopped taking cases in April 2016, Herkimer county assigned counsel program, and a family court contractor operating two programs in Otsego and Broome counties respectively. The missing information for the family court contractor had no impact on the calculations in this document, however, as family court providers of representation are not included in the analysis.

[31] See above, note 9.

[32] These 86 comprised eleven providers from the *Hurrell-Harring* counties, 64 completed surveys, four responses indicating the provider was unable to complete the survey, and a further seven where the survey data were collected by ILS directly through interviews. One survey received at ILS on November 27, 2017 would have been the eighty-seventh case, but was received too late to be included in the analysis.

one or more piece of data.[33] We therefore sought to impute missing values wherever we could. We adopted the following strategies.

Estimation of violent felony numbers. Some programs could not break out their total number of felony cases into those which were 'violent' and those which were not. In this situation, we took the total number of felonies in the program and used data from DCJS on the proportion of cases in the county that were violent felonies.[34] We applied the proportion for each county to estimate how many of the providers' cases were also violent felonies. This estimation technique was used for 9 responses.

Estimating the number of appeals in which the underlying conviction was the result of a guilty plea. Twenty-one programs provided numbers of appellate cases broken out by whether the underlying matter was a trial or an appeal. These programs reported a total of 901 appeal cases, of which 617 (or 68.5%) were appeals of a guilty plea.[35] Where programs supplied only a total number of appeals cases without being able to break them down, we estimated the number of such appeals which had been appeals of a guilty plea by multiplying the total by 0.685, rounding up to the nearest whole number, and assuming the remainder were appeals of verdicts. This estimation technique was used for 15 responses.

Estimating how much of a program's total budget was attributable to criminal representation. Some providers could not say what proportion of their budget was dedicated to criminal (as opposed to family court) representation, and could only report their program's entire budget. In these cases, we took the weighted total of criminal cases reported and the total number of family court cases as reported in the provider's UCS-195 form. Using established ILS standards, we weighted family court cases as equivalent to 2.67 misdemeanors in order to find the proportion of the provider's weighted caseload that family court cases represented. We then estimated the amount of the provider's budget that was dedicated to family court representation using that proportion. This estimation technique was used 15 times.

Estimate of non-attorney salaries. Where programs had no non-attorney staff at all, they could not report the average salary of such staff. This meant that we had no basis on which to project the cost of hiring new non-attorney staff in these programs. We therefore took the average of all programs where average non-attorney salary and fringe amounts were reported, and substituted this value where it was missing elsewhere. The average reported amount of salary and fringe combined in programs where the value was reported was $53,695.72. It was used in eight cases.

Setting post-disposition cases to 'zero'. Several providers had difficulty reporting post-disposition cases. Where they supplied numbers, they frequently indicated that they were unable to count certain types of post-disposition cases, and that their totals were therefore undercounts. Elsewhere, providers simply reported the number was 'unknown'. Rather than fail to use the data from providers who could not report this number, we chose to set the number of post-disposition cases to 'zero' for such providers. The effect of this will, of course, be to undercount the need for caseload relief in these providers, and so will tend toward a more conservative estimate of funding needs, though we also noted that among the

[33] Note that where providers themselves supplied data that were estimates, we took these in good faith and used them in the same way as other data submitted.

[34] These data can be found here: http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/index.htm.

[35] Three programs reported over 90% of appeals were guilty pleas, six were between 80% and 90%, two were between 70 and 80%, five were in the range 60-70%, and four were under 60% with the lowest value being 33%.

44 providers that did supply such data, post-disposition cases represented just 1.9% of their total weighted caseload. This substitution was employed 17 times.

The application of these estimation and substitution techniques resulted in usable data in a total of 61 of the 86 providers for which we had new-style data.

ILS also made a number of other adjustments to the data. First, cases in three programs where representation was limited to only a client's first appearance in court were weighted to be equivalent to 0.25 of a misdemeanor case. This weight was applied in three contexts – Summons Parts in New York City's First and Second Departments, and Street Arraignment Part representation in Suffolk County. In these programs, cases are handled for their first appearance only, and, if they continue, are counted separately. In recognition of the fact that these arrangements by their design systematically confine representation in large numbers of cases to a single appearance, they were weighted at 0.25.[36]

We also made three adjustments to the salary and fringe information we received in order to assure sufficient funds for recruitment of new attorneys. First, in order to approximate the cost of recruiting attorneys in 2023 dollars, we inflated the 2016 salary and fringe amounts reported to us by 10%.[37] Second, we added an allocation for equipment and office space of new staff. We allocated a presumptive 200 square feet of office space per employee, in keeping with approximate trends in space allocations across the country. We then referred to a market survey conducted by the New York State Office of General Services to find the average cost per square foot of office space across different areas of the state, before adding an allocation for each person for equipment (such as a desk, computer and case management system license).[38] Third, we also identified fifteen providers where the average salary and fringe rates for attorneys were lower than the lowest rates reported in the national survey of defender salaries published by the *National Association for Law Placement*, and therefore lower than the rates used in our prior *Cost Estimates*, which relied on the data from that survey. In these cases, we

[36] This 0.25 weighting is consistent with our report *Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2015 Update* (Office of Indigent Legal Services, 2015) available at https://www.ils.ny.gov/files/*Hurrell-Harring*/Caseload%20Reduction/Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York%20-%202015%20Update.pdf (accessed 12/7/2016). In the case of the Street Arraignment Part, it was not possible to identify cases actually resolved within a single appearance, and accordingly all cases in the Part were weighted to 0.25 to avoid overstating needed assistance.

[37] This compares conservatively to the 12.21% increase in the Consumer Price Index in the seven years prior to 2016. See Bureau of Labor Statistics CPI calculator at https://www.bls.gov/data/inflation_calculator.htm (comparison of January 2009 and January 2016).

[38] Adrian Ponsen, Spring 2015, *Trends in Square Feet per Office Employee*, NAIOP Commercial Real Estate Development Association, http://www.naiop.org/en/Magazine/2015/Spring-2015/Business-Trends/Trends-in-Square-Feet-per-Office-Employee.aspx (accessed 12/1/16). The market survey, which is unpublished, indicated the average cost per square foot of office space in non-New York counties is expected to be $15.75 for 2018-21, while the price in New York City counties is expected to be $37.38. To account for equipment and space costs of new staff, we first projected the total number of new staff to be hired including both attorneys and non-attorneys statewide. This figure was 1,478. We then allocated $2,000 for each new hire to cover the cost of equipment including office furniture, computing equipment, and case management system licenses. In addition, we allocated funding for 200 square-feet of office space for every new hire. We therefore estimated the space and equipment costs of a non-New York City hire as $5,150 annually, and $9,475 annually in New York City counties.

adjusted the rates found in that survey for inflation and used the resulting figure as a 'floor', assuring that salaries for these positions would be minimally competitive.[39]

All data were proof-read for accuracy at this point.

Where we had new-style data, our cost estimation method followed the same procedure employed in the *Cost Estimate* reports with the following refinements.[40] First, and most obviously, the present analysis used reported total caseloads from each provider broken into seven categories in accordance with the new caseload standards, and not (as previously) into only four (homicides, other felonies, misdemeanors and violations, and appellate cases). Second, it employed information on the actual amount spent, and number of staff dedicated, to criminal representation exclusively, rather than mixing criminal and family court representation together. Third, whereas the *Cost Estimate* reports employed a uniform salary and fringe factor for all programs to estimate the cost of recruiting new attorneys, this estimation used actual salary and fringe data from the programs themselves to estimate that cost, subject to the adjustments described above. Fourth, whereas the *Cost Estimate* reports do not account for space and equipment needs of new staff, we accounted for this in the present analysis. Fifth, whereas previous *Cost Estimates* only allocated funding for recruitment of non-attorney staff in the event there were fewer than 0.5 such staff for every attorney, the present analysis maintained pre-existing staffing ratios where they already exceeded that level.[41] And sixth, we allocated funding to each county for data collection and reporting to ILS in response to our findings in Section II of this report, further details of which are described below. With these refinements, we expect the analysis that follows is the closest possible estimate of needs for compliance with caseload standards in the year 2023.

Of the 155 providers active in the state in 2016, 11 were within the *Hurrell-Harring* counties, and a further 11 performed only family court representation. Accordingly, our analysis was directed at

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[39] The National Association for Law Placement's 2012 *Public Sector and Public Interest Attorney Salary Report* (NALP, Washington DC) indicated that public defenders with one year or less of experience were paid an average of $51,521 in the North-East United States. Attorney salaries across New York increased by 6.1969% between 2012 and 2016 (according to Bureau of Labor Statistics data found here https://www.bls.gov/oes/current/oes_ny.htm, accessed 10/19/17) so we infer average salaries of starting attorneys is likely now approximately $54,714. As in previous years we then estimated the cost of fringe benefits at 52% using the Bureau of Labor Statistics publication *Employer Costs for Employment Compensation - June 2016*, https://www.bls.gov/news.release/archives/ecec_09082016.pdf, Table 3 (accessed 10/19/17). To project costs for 2023, we then inflated the value by 10% as described above. This allowed us to estimate the cost of recruiting an attorney with less than one year's experience with salary and fringe in 2023 of $91,482. We set this as the minimum value for any program.

[40] For more details of the *Cost Estimate* method, see *supra* notes 21 and 22.

[41] Our previous standard stated that staffing in all providers should include a minimum of 0.5 of a non-attorney staff member per attorney staff member, where non-attorneys are understood to include investigators, paralegals, administrative assistants, social workers, and all other staff who are not attorneys engaged in the representation of clients. A provider with ten attorneys would thus require five non-attorneys, and where they do not our formula allocates additional funding to attain that level. The present analysis refines this approach in one respect: where non-attorney staff exist in a provider at a level *above* 0.5-per-attorney, *and* where our analysis suggests additional attorneys should be recruited to comply with caseload standards, then our calculations now allocate sufficient funding for the provider to recruit additional non-attorney staff to *maintain the present ratio*, rather than limiting such assistance to the point the provider would have to reduce their present rate of support staff to a lower ratio.

estimating total caseload funding needs in the remaining 133 providers of representation. Among these 133, 57 were among the 61 for which we had sufficient data to compute their needs directly using new-style data on their caseloads, staffing, salaries and expenditures. We computed total funding needs for the 57 providers for which we had new-style data to be $130,488,550.

This left 76 providers for which we had insufficient data to compute caseload funding needs directly, and for which we needed instead to impute funding needs from old style data. We computed the level of need using the old-style data we had across all 133 providers and weighted the results by the proportion of each provider's caseload that was exclusively criminal in nature, thereby creating a proxy for the amount of criminal-side caseload relief needed in each program.[42] These calculations revealed that the amount of need in the remaining 76 providers was equal to approximately 44% of total need we'd found in the 57 programs for which had new-style data – a reflection of the relatively smaller size of the 76 remaining programs. Based on the $130,488,550 we had computed as required in the first 57 programs, we inferred the remaining programs required an additional $57,428,836 to be brought into compliance with the new caseload standards, bringing the statewide total to $187,916,986.

In order to facilitate data collection and reporting to ILS for assessment of caseload standards compliance, we allocated $100,000 to counties where defenders handled in excess of 2,000 cases in 2016 for appointment of a data officer to oversee implementation of caseload standards, caseload data recording, and reporting of data to ILS. Where defenders handled fewer than 2,000 cases in 2016 the amount was prorated proportionate with that caseload. In order to refine data collection by the year 2023 and implement the case definitions described above, and for ILS to be able to receive, process, and assure the quality of data provided by counties, we plan to create eleven Data Specialist positions within ILS itself, including two personnel based at ILS' offices in Albany and a further nine to be based in each ILS Regional Support Center.

Table 4 shows the calculated caseload needs allocated to every county employing the cost estimation method described above.[43]

[42] In our *Cost Estimates* we weight family court cases and felonies as equivalent to 2.67 misdemeanors, and we were constrained to employ that weighting scheme here because old style data does not permit the application of the weights in the new caseloads standards. 30 providers of the 133 under study here (23%) performed only criminal representation, while in a further 53 (40%) criminal cases represented a majority of their weighted caseload. In the remaining 50 providers (38%) the weighted total of family court cases was greater than the weighted total of criminal court cases.

[43] The figures in Table 4 include the application of adjustments referenced in the 12/1/17 letter of ILS Director Leahy to Director of the Budget Robert Mujica.

Table 4: Funding allocations by locality

Locality	Allocated funding
Albany	*$8,156,496.48*
Allegany	*$699,894.92*
Broome	*$8,016,185.95*
Cattaraugus	*$3,150,686.41*
Cayuga	*$662,184.00*
Chautauqua	*$4,720,231.97*
Chemung	*$1,749,391.75*
Chenango	*$415,698.47*
Clinton	*$1,993,294.11*
Columbia	*$1,330,384.20*
Cortland	*$1,280,927.33*
Delaware	*$526,600.00*
Dutchess	*$4,202,422.36*
Erie	*$14,881,765.29*
Essex	*$808,460.52*
Franklin	*$714,057.24*
Fulton	*$1,176,397.59*
Genesee	*$1,633,461.65*
Greene	*$2,318,550.49*
Hamilton	*$2,400.00*
Herkimer	*$963,405.70*
Jefferson	*$3,433,293.77*
Lewis	*$451,872.65*
Livingston	*$1,578,014.02*
Madison	*$778,316.15*
Monroe	*$11,486,329.79*
Montgomery	*$630,682.56*
Nassau	*$2,920,845.92*
New York City	*$71,892,130.21*
Niagara	*$3,015,616.60*
Oneida	*$5,625,810.04*
Orange	*$7,071,904.89*
Orleans	*$771,327.44*
Oswego	*$2,785,138.35*
Otsego	*$498,236.06*
Putnam	*$634,672.01*
Rensselaer	*$2,136,208.85*
Rockland	*$3,454,765.55*
Saint Lawrence	*$1,386,134.80*
Saratoga	*$1,884,972.68*
Schenectady	*$3,079,159.58*
Schoharie	*$549,317.41*
Seneca	*$1,270,287.80*
Steuben	*$1,200,563.31*
Sullivan	*$1,265,204.18*
Tioga	*$427,573.14*
Tompkins	*$566,250.00*
Ulster	*$2,862,439.37*
Warren	*$1,054,428.78*
Wayne	*$1,293,663.38*
Westchester	*$1,000,000.00*
Wyoming	*$382,774.72*
Yates	*$315,505.33*
Grand total	***$197,106,335.75***

Section V: Steps for Implementation

The distribution of funding in the amounts specified in Section IV is critical for the implementation of caseload standards across New York's counties. That funding allocation, developed through careful research, is the amount required to hire sufficient staff in institutional providers, to pay for the time of assigned counsel to provide services that comply with the caseload standards laid out by ILS, and to assure the collection of caseload data that are both complete and accurate, allowing ILS to fulfil its monitoring responsibilities in the future. Only with this funding can compliance with caseload standards envisioned in the 2017-18 budget be accomplished.

The participation of local governments in the implementation of caseload standards is also critical to success. We look forward to working constructively with local governments to use state funding wisely to generate verifiable progress towards implementation of caseload standards. We are encouraged by the expectation in the 2017-18 budget of 'good faith efforts' on the parts of such governments in the implementation of this plan, and look forward to devising ways to build both the services their defender programs provide, and the internal infrastructure and reporting capabilities of those programs, to assure reform that is both measurable, meaningful and enduring.

ILS, for its part, commits in the creation of this plan to the assumption of the full responsibility for implementation of caseload reform statewide in New York. The actual implementation of these standards will be a multi-stage process with interim steps, which we outline below.

Hiring of ILS data staff

In order to begin this program of caseload standards implementation, ILS must immediately increase its ability to receive and analyze data from counties. At present, ILS is effectively limited to receiving such data, but does not have the capacity to study in detail how the data were produced, and therefore has very limited ability to understand the quality or even the meaning of data received. These new hires both in Albany and across the state in the new ILS Regional Centers will provide ILS with the basic infrastructure to begin receiving and evaluating the quality of data from providers, and to work with providers to address obstacles to accurate, consistent reporting. ILS data staff will also have the responsibility of monitoring progress toward reporting of data compliant with case definitions by 2023. With time, these data staff will become responsible for regular, detailed submissions of information from providers to ILS across the state that will be foundational to assuring full implementation of the caseload standards by 2023.

Improvement of data reporting capabilities in counties

ILS will work with county governments to increase and improve their ability to supply accurate counts of caseloads to ILS through the use of funding to appoint data officers. In some counties we expect the funding will be used to hire new personnel; in others, where caseloads are smaller, this data gathering function may be handled in other ways. Where providers have insufficient infrastructure to record or report data on caseloads, ILS will seek to assure that such local infrastructure is developed. Further, ILS will also seek to assure that providers develop the ability to record and report case counts by type, annually, and consistently with the definitions laid out in Section III above. This may include new hires for data entry, changes to data entry procedures, purchase of new technology, or working with software providers to update provider reporting abilities.

Monitor progress toward compliance with caseload standards

By 2023, providers across New York must comply with the caseload standards ILS has laid out, meaning that attorneys in institutional providers must handle no more than 300 weighted cases, and assigned counsel should spend no fewer than 6.25 hours per weighted case. Fully accurate monitoring of compliance with these standards must await the development of capacity in counties to report accurate, consistent data, but ILS will issue interim progress reports on the development of capacity in counties to report accurate data in compliance with caseload definitions, the extent to which providers in fact report such data to ILS, and progress toward full compliance with caseloads standards statewide.

Monitor sufficiency of funding for compliance with caseload standards

Although we have gone to significant lengths to accurately project the needs of counties to meet caseload standards, we are already aware of changes in provider systems across the counties we studied since 2016. Steuben and Yates counties both instituted new conflict defenders while Franklin County eliminated one. In Livingston and Columbia counties contracts were ended with conflict providers, only for each to be replaced, after some time, by new providers later. Meanwhile, we cannot fully anticipate the impact of possible future changes in caseloads either due to changes in prosecution and policing practices, or changes in financial eligibility standards for defender services and caseload increases resulting from the implementation of counsel at first appearance. These and other changes may mean that the allocations above require adjustment in recognition of the demands imposed by these changed systems, as well as other possible changes that may happen over time.

Review of appropriateness of caseload standards

Pursuant to ILS' obligations under the *Hurrell-Harring* settlement, ILS must "review the appropriateness" of the caseload standards themselves.[44] In the course of our research, we discovered approximately 1.4% of the caseload of providers was not captured, and so not weighted, by the standards, implying that defenders continue to take on work for which the standards will not provide funding. Second, the standards do not consider length of representation, and so do not account well where assignment systems are 'horizontal' by design, requiring defenders to represent a client for a single appearance in court rather than an entire case. Third, we reserved several matters for further study in Section III, above, such as appropriate weighting for specialty court cases, 440 motions, and others. ILS must consider, study and arrive at decisions on these outstanding questions in order to assure that defenders' work is fairly and accurately captured in the caseload standards.

Monitor intended and unintended consequences of caseload standards

Implementation of caseload standards is intended to provide attorneys the time and resources they need to provide adequate representation. In turn, with this time available, attorney services to clients should improve and expand, the experiences of clients subject to criminal accusations should be improved, and, through the combined effects of this plan and the others issued today, the quality of justice dispensed in courts throughout New York should improve measurably and significantly. ILS commits to a program of research that will monitor and document these changes, assuring both that ILS

[44] See *Hurrell-Harring* settlement, section IV(E), available at: https://www.ils.ny.gov/files/*Hurrell-Harring*%20Final%20Settlement%20102114.pdf (accessed 11/30/17).

can be held accountable for the impacts it has, and that the experience and lessons of implementation are preserved for the future.

By the same token, implementation science suggests that programs of reform such as these can have unintended consequences, or even fail, if they are not properly implemented.[45] We note the words of Donald Campbell: "The more any quantitative social indicator is used for social decision-making, the more subject it will be to corruption pressures and the more apt it will be to distort and corrupt the social processes it is intended to monitor."[46] We are aware, for example, that our definitions require the counting of new cases, and are therefore mindful of the need to monitor for strategies designed to inflate these numbers through the construal of conflicts of interest or increased 'horizontal' representation. We also note that the influx of state funding planned here is predicated on the assumption that existing spending within providers, whatever its sources, and including spending on family court representation, remains consistent and is not supplanted by that new funding. This assumption, too, we must verify over time.

Through its research function, and in coordination with its statewide implementation team, ILS will seek to continue to develop new insights into the impact that caseload standards have statewide, and to assure the continual improvement in services that they promise is realized.

Conclusion

ILS has sought to lay out a plan for implementation of caseload standards that is both realistic, because it is empirically grounded, and transformative, because it sets the stage for significant reforms across the state. Fully executed, this plan would set New York apart as the only state in the nation to have implemented a program of funding designed to allow attorneys adequate time with their clients to provide the services they need to a level of quality that honors the requirements of the Constitution and the dignity of persons accused of crime and unable to afford a lawyer. While ILS cannot fully anticipate the process by which this reform will proceed in every county, it can and does commit to the vigorous execution of this plan, the sensible and responsible deployment of funds, and a research and data gathering process that can verify both the implementation and the impact of our work.

[45] See, for example, Malcolm Feeley (1986) *Court Reform on Trial: Why Simple Solutions Fail*.
[46] Donald T. Campbell, 1979, "Assessing the impact of planned social change," 2(1), *Evaluation and Program Planning*, page 85.

Appendices

A: Interview questions used in 11 counties.

B: Caseload survey instrument and accompanying materials.

C: Needs assessment survey – questions on electronic recording of information.

APPENDIX A – Interview questions used in 11 Counties

Your caseload tracking infrastructure

ILS needs to write a plan for providers to receive caseload relief statewide by 2023. That plan will require ILS to track caseload information for all provider. As such it might include new data entry staff or computer equipment for providers to supply that information. ILS also needs to understand the differences in how programs open cases, because differences in practices could result in differences in the numbers of cases being counted.

We have prepared the following list of specific questions to indicate the sorts of issues we are interested in learning more about. Often, the best place to start this conversation is for you to walk us through the administrative process by which cases are opened in your office, but we can conduct this conversation in any way you please.

I. When opening a case in your system, do you record sufficient information to categorize it into one of the types named in the caseload standards (violent felony, other felony, misdemeanor/violation, post-disposition case, parole revocation, appeals of verdicts, appeals of guilty pleas)? *(If not, what additional equipment or infrastructure would allow you to do that?)*

II. Do you have a computer system that will allow you to quickly extract counts of cases in each category? *(If not, what additional equipment or infrastructure would allow you to do that?)*

III. When is a case usually opened in your system? *(For example: upon first meeting a client, upon arraignment, upon assignment by a court, only after a conflict check has taken place, only after an eligibility determination has taken place, etc.)*

IV. Do you open a new case when:
   i. An existing client is rearrested on a new offense before the closure of his/her pending case
   ii. Counsel in the case changes to another person within your office or program
   iii. Charges in a case are severed
   iv. Charges relating to multiple cases against a single client are rolled together or combined
   v. An existing client is returned to court on a bench warrant
   vi. A case transfers to a new court (e.g. felony case to County court)

V. Do you open a new case when an existing client is accused of:
   i. Violating their conditions of probation
   ii. Violating conditions of a Conditional Discharge
   iii. Violating conditions of an ACD, resulting in return of ACD to court calendar
   iv. Failure to pay a fine
   v. Failure to complete a treatment program
   vi. A client seeks modification of a sentence

VI. How do you count cases in Integrated Domestic Violence court (if you have one)?

VII. Could you describe how you think local prosecutorial charging decisions influence your case count? For example, where a person is accused of a series of offenses committed in multiple places over a period of several weeks, do prosecutors charge as one case, or several?

APPENDIX B – Caseload survey instrument and accompanying materials

Dear [NAME] –

Apologies for the impersonal nature of this message. I'm using a mailing list to contact you and other colleagues around the state to ask for help. As you may know, my office, the Office of Indigent Legal Services, has the responsibility to submit a plan for the implementation of caseload standards for all providers of criminal defense representation across the state by December of this year. I'm contacting you either because you're someone who provides criminal defense services, or you're someone I've relied on the past to supply information about them.

I'm attaching to this message a request for information that is essential to our planning process (ILS Caseloads Standard Data Request Form.docx) along with a set of instructions (ILS Caseload Standards Data Request – instructions and definitions.docx). I'm requesting, essentially, detailed information on the types of cases you handled in the last year and the staff and resources your program had available to handle them. The form also contains detailed questions about how exactly you count cases. And, if you can't easily report the information we're asking for, it asks what additional resources you would need to do so. There's also some background information (Caseloads standards – background information.docx).

You can fill the Data Request Form out on your computer by typing in the grey boxes you see in the document, or you can print it, fill it out by hand, and scan it. In either case, you can email your response back to us at surveys@ils.ny.gov, or mail it to the address in my signature block below. Either myself or Research Analyst Alyssa Clark will acknowledge receipt.

We do not expect every provider in the state to be able to report caseload data to us in the way we are asking for it. The purpose of this request, therefore, is to determine how many providers across the state can report these data to us, and, for those who are not able to, assess what resources are needed to make that possible. Your response will help us to make three substantive points in our report in December:

- First, not all providers are presently equipped to supply needed data for caseloads standards implementation
- Second, specific additional resources are needed in those providers to build that capacity; and
- Third, available data suggest significant funding is needed to alleviate the pressure of caseloads.

Your response will help give us the evidence we need to substantiate those points.

You may have already received several solicitations from my office this year for information. I apologize if these requests seem onerous, and I recognize reporting data can be a burden. These requests are necessary because this legislation has tremendous potential to bring large increases in resources to providers of indigent legal services across the state. We have heard from so many of you for years that caseload relief is the primary need you have. This year's state budget contains promises of significant steps toward progress at alleviating that problem. Yes, caseload data are important to the budgeting process, and gathering them takes time. But we expect that the resources they will make available will ultimately be worth the effort.

I can be contacted at the address and phone number below, or by replying to this email. I looked forward to hearing from you!

Sincerely,

Andy Davies

ILS Caseloads Standard Data Request Form

You can help us plan for implementation of statewide caseload standards by filling out as much as possible of this questionnaire. If you cannot fill out something, check 'Unknown'. All questions refer to your program in the calendar year (January 1-December 31) 2016 unless otherwise specified.

- Please **fill out** this document by hand, or by typing in the grey boxes.
- Please **return it to us** via email at surveys@ils.ny.gov, or mail to: Andrew Davies, Office of Indigent Legal Services, 80 South Swan St., Suite 1147, Albany, NY 12210.
- **Any questions**? Contact Andy at andrew.davies@ils.ny.gov or 518-461-1889.

Your name: _____

Your county: _____

Your contact phone: _____

Your contact email: _____

Your organization name: _____

1. Please report the total number of new cases assigned during 2016 in the following categories:

Violent felonies	_____	Estimate: ☐	Unknown: ☐
Other felonies	_____	Estimate: ☐	Unknown: ☐
Misdemeanors and violations	_____	Estimate: ☐	Unknown: ☐
Parole revocation	_____	Estimate: ☐	Unknown: ☐
Post-disposition cases	_____	Estimate: ☐	Unknown: ☐
Appeals of a guilty plea	_____	Estimate: ☐	Unknown: ☐
Appeals of a verdict	_____	Estimate: ☐	Unknown: ☐
Other criminal cases *[describe under Q.5]*	_____	Estimate: ☐	Unknown: ☐

2. Please tell us how much your program spent in 2016 on criminal representation:

$_____ Estimate: ☐ Unknown: ☐

Questions 3 & 4 are for institutional providers only.
Assigned counsel need not answer questions 3 & 4

3. Please report the number of full-time equivalent staff employed on July 1, 2016, in the following categories:

Attorneys in criminal practice	_____	Estimate: ☐	Unknown: ☐
Non-attorneys working on criminal cases	_____	Estimate: ☐	Unknown: ☐

4. **Please tell us the average cost of salary and benefits for the following types of staff member:**

An attorney providing criminal representation $_____ Estimate: ☐ Unknown: ☐

A non-attorney assisting with criminal cases $_____ Estimate: ☐ Unknown: ☐

5. **If any of the above information (questions 1-4) was difficult or impossible to provide, please explain why, and what steps could be taken to make the information obtainable. Again, the purpose of asking these questions is to help us assess need for developing this capability.**

_____

6. **Do you open a new case when:**

An existing client is rearrested on a new offense before the closure of his/her pending case?	Yes: ☐	No: ☐
Counsel in the case changes to another person within your office or program?	Yes: ☐	No: ☐
Charges in a case are severed?	Yes: ☐	No: ☐
Charges relating to multiple cases against a single client are rolled together or combined?	Yes: ☐	No: ☐
A client previously found incapacitated because of mental disease or defect pursuant to CPL 730 is found fit to proceed on a felony case?	Yes: ☐	No: ☐
A case transfers to a new court (e.g. felony case to County court)?	Yes: ☐	No: ☐

Please explain your answers to Question 6 here, if necessary:

_____

7. **Do you open a new case when an existing client:**

Is returned to court on a bench warrant?	Yes: ☐	No: ☐
Seeks modification of a sentence?	Yes: ☐	No: ☐
Enters a specialty/treatment court program (e.g. drug court)?	Yes: ☐	No: ☐
Is accused of violating their conditions of probation?	Yes: ☐	No: ☐
Is accused of violating conditions of a Conditional Discharge?	Yes: ☐	No: ☐
Is accused of violating conditions of an ACD, resulting in return of ACD to court calendar?	Yes: ☐	No: ☐
Is accused of failure to pay a fine?	Yes: ☐	No: ☐
Is accused of failure to complete a treatment program?	Yes: ☐	No: ☐

Please explain your answers to Question 7 here, if necessary:

_____

8. **When opening a case in your system, do you record sufficient information to categorize it into one of the types named in the caseload standards?** *(The categories are: violent felony, other felony, misdemeanor/violation, post-disposition case, parole revocation, appeals of verdicts, appeals of guilty pleas. If not, what additional equipment or infrastructure would allow you to do that?)*

_____

9. **Do you have a computer system that will allow you to quickly extract counts of cases in each category?** *(If not, what additional equipment or infrastructure would allow you to do that?)*

_____

10. **When is a case usually opened in your system?** *(For example: upon first meeting a client, upon arraignment, upon assignment by a court, only after a conflict check has taken place, only after an eligibility determination has taken place, etc.)*

_____

11. **If a case were defined as "one or more charges against a single defendant originating in a single court contained in a single charging instrument," would that differ from how you define a case at present? Please explain.**

_____

12. **Please tell us any other information you think we should know:**

_____

Thank you for your time and attention!

ILS Caseload Standards Data Request

ILS is sending a form to providers of representation across the state requesting data to help assess whether programs need additional resources to meet caseload standards. You will find a set of Instructions and definitions associated with this request below.

It's our expectation that providers of representation will differ in their ability to respond to this request in full, and we are therefore asking that you do the following:

1) Try to provide the data we are requesting in Questions 1 to 4 of the form. Assigned counsel programs do not need to answer questions 3 and 4.
2) Whether or not you can provide the data, please let us know what it would take for you to track caseloads efficiently and accurately such that this kind of reporting could become more feasible. Tell us about those things in Question 5.
3) Questions 6-11 ask about how you track your caseload. Please answer as fully as you can.

If you administer two or more separate systems (such as a defender office and an assigned counsel program), or provide services in several counties, please fill out separate forms for each system in each county.

The more specific and complete you can be in your responses, the better a position we will be in to submit a convincing plan in December. We might try to follow up with you to fill in any missing information.

Please scan and submit your response to surveys@ils.ny.gov, or mail it to:

Andrew Davies
Office of Indigent Legal Services
80 South Swan Street, Suite 1147
Albany NY 12210

Instructions and Definitions

ILS does not have a standard definition of a 'case' but is studying how programs record cases to try and develop one. We are therefore requesting that programs provide counts of cases using whatever conventions and practices they have for counting at present. If you are interested in learning more about our attempt to study this, contact andrew.davies@ils.ny.gov, 518-461-1889.

- If a question does not apply to you, please write "N/A" in the field.
- If an answer is unknown check 'Unknown'.
- If an answer is an estimate, check 'Estimate.'

Question 1: Instructions for counting and reporting caseloads

We request that you supply, if you are able, counts of new cases assigned in the categories provided here.

The categories are as follows.

Violent Felony: 'Violent felony' is as defined in Penal Law § 70.02 and any class A felony except those defined in Article 220 of the Penal Law (Class A "drug" felonies). We include non-drug class A felonies because they constitute some of the most serious offenses which can result in life imprisonment (P.L. §

70.00(2)(a)), require incarceration after sentence (P.L. § 60.05), have pre-indictment plea bargaining limitations (Crim. Proc. L. §§ 180.50; 180.70), limit post-indictment plea agreements to no lower than a C violent felony (C.P.L. § 220.10(5)(d)(i)), and any "attempt" is classified - at a minimum - as a B violent felony (P.L. §§ 110.05; 70.02). We exclude class A drug felonies because recent changes to the sentencing laws pursuant to the 2009 Rockefeller Drug Reform created sentencing structures more akin to non-violent felonies in most cases (see P.L. § 70.71). This is also consistent with the New York State Division of Criminal Justice Services (DCJS) definition of "Violent felony." A list of these offenses can be found in the Appendix of this DCJS report: New York State Violent Felony Processing, 2015 Annual Report, available at http://www.criminaljustice.ny.gov/crimnet/ojsa/nys-violent-felony-offense-processing-2015.pdf.

Non-violent Felony: A non-violent felony is any case in which the top charge is a felony other than a violent felony as defined above.

Misdemeanors and Violations: A misdemeanor or violation case is any case in which the top charge is a misdemeanor, violation, or lesser charge where representation is provided.

Parole Revocation: Parole revocation is any case where a person is accused of having violated the terms of his or her parole. Such cases include violations which are only 'technical' in nature and do not involve the commission of a new offense. If, however, the violation did result from an accusation of new criminal conduct resulting in new criminal charges and your program will represent the client in that case, the new criminal case should also be counted separately as a 'violent felony', 'non-violent felony', or 'misdemeanor or violation' as appropriate, in addition to the parole revocation case.

Post-Disposition: Post-disposition cases are those in which the client is accused of failing to abide by the conditions of a sentence, or has an ACD case restored to the court's calendar. This includes cases in which a client:

- is accused of violating the terms of probation or conditional discharge,
- is accused of failure to pay a fine,
- has an ACD case restored to the court's calendar under Criminal Procedure Law §170.55 and/or §170.56,
- is accused of failing to complete a treatment program
- seeks modification of a sentence

Violation of probation cases include violations which are only 'technical' in nature and do not involve the commission of a new offense.

If, however, the violation did result from an accusation of new criminal conduct resulting in new criminal charges and your program will represent the client in that case, the new criminal case should also be counted separately as a 'violent felony', 'non-violent felony', or 'misdemeanor or violation' as appropriate, in addition to the post-disposition case.

Appeals of Guilty Pleas: An appeal of a guilty plea is a case in which the defendant seeks to overturn the outcome of a case in a trial court that was resolved in a fashion other than a verdict.

Appeals of Verdicts: An appeal of verdict is a case in which the defendant seeks to overturn the verdict of a trial court. This category also includes cases in which the prosecution seeks to overturn a dismissal by a trial judge.

Other cases: We recognize that several types of cases aren't covered by the standards. We would like to hear from you on what those cases are, and how many of them you provide representation in. This will

help us make more informed decisions both about funding requests and possible modifications to the standards. Examples of case types not covered by the standards include defense of persons considered for classification on the sex offender's register and petitions for review of those classifications under Corrections Law Article 6-C (sex offender registration act, SORA), defense of persons subject to a civil management detention under Mental Hygiene Law Article 10 (sex offender civil commitment), administrative appeals of denial of parole, and motions for post-conviction relief filed under NYCPL Article 440. *Please describe all 'Other' cases under Question 5.*

Question 2: Instructions for Reporting your Program's Spending

Spending should reflect the total amount spent to run all aspects of the program in 2016. Spending should be for 18-b representation only and should include spending for attorneys, non-attorneys, and all other costs related to criminal representation.

Question 3: Instructions for reporting how many staff you have

This question is for institutional providers only. Assigned counsel need not answer.

We count 'staff' in full-time equivalent terms. That means one staff-person who works full-time in your program is counted as '1', and a staff member who works 50% of full-time is counted as 0.5. A program with one full-time and one 50% attorney, for example, would therefore have *"1.5 full-time equivalent"* attorney staff.

For staff who maintain a caseload of *both* criminal and non-criminal cases (for example, they provide representation to parents in family court matters as well as representing criminal defendants) we ask that you quantify how much time they spend on each. (You can estimate the numbers if you need to.) The examples below illustrate this.

> Attorney 1 is full-time employee that spends 75% of his/her time on criminal cases and 25% on non-criminal cases. The program therefore adds 0.75 to total reported under "Attorneys in criminal practice."
>
> Attorney 2 is part-time (40%) employee that spends 75% of his/her time on criminal cases and 25% on non-criminal cases. The program therefore adds 0.3 (found by multiplying 0.4 by 0.75) to total reported under "Attorneys in criminal practice".

"Non-attorneys" includes everyone who works for you who isn't an attorney – receptionists, investigators, paralegals, etc. – all added together. The same rules for full- and part-time, and time spent on criminal and non-criminal cases, apply to these personnel.

Question 4: Instructions for Reporting your Program's Salaries

This question is for institutional providers only. Assigned counsel need not answer.

This question is intended to capture the average cost of compensating an attorney and a non-attorney in your program for a year. Thus please report the average your program spends on individuals in each category to cover both salaries and fringe benefits. Include the salaries of supervisors in your calculations. If none of your staff in fact work full-time hours, please report what the average of their salary and benefit packages would be if they worked full-time.

Question 5: Other issues

If you wish to report to us why obtaining the data for Questions 1-4 is difficult or impossible, and note additional resources or capabilities that would make obtaining it more easy, please do so here. All information entered here will assist ILS in crafting a plan to implement caseload standards statewide.

Questions 6-11

Please answer to the best of your ability, attaching additional pages if necessary.

Thank you for all your help!

Caseload Standards: Some Frequently Asked Questions

Why do we have new caseload standards?

ILS was required to create caseload standards under the *Hurrell-Harring et al. v. The State of New York* settlement agreement. Under the 2017-18 budget, ILS now has the responsibility to develop a plan for implementing caseload standards statewide. Specifically, that new law says ILS must "Develop and implement a written plan that establishes numerical caseload/workload standards for each provider of constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel."

What are the new caseload standards?

The new caseload standards were published recently in a 15-page report that you can find here: https://goo.gl/utZV9F. They place a limit on the maximum number of cases that attorneys should on average be handling in institutional providers. For attorneys in assigned counsel programs they state the minimum number of hours that attorneys should, on average, spend on cases. The standards are as follows.

Case type	Maximum Annual Assignments	Minimum Average Hours
Violent Felonies	50	37.5
Non-violent Felonies	100	18.8
Misdemeanors and Violations	300	6.3
Post-Disposition	200	9.4
Parole Revocation	200	9.4
Appeals of Verdicts	12	156.3
Appeals of Guilty Pleas	35	53.6

How do they apply to assigned counsel lawyers?

The new legislation required that the standards apply to assigned counsel lawyers as well as defenders in public defender offices, legal aid societies or other institutional providers. But they apply in a slightly different way. Whereas for a defender who works in an office, caseload standards take the form of limits on the number of assignments he or she can receive on average in a year, for assigned counsel attorneys they instead state how many hours, on average, he or she is expected to spend on particular types of cases. By adhering to these standards, assigned counsel lawyers can spend the same amount of time per case as a lawyer in an institutional provider operating under caseload caps. We note, however, that assigned counsel lawyers receiving assignments in excess of the annual maxima established for institutional providers would also be presumptively out of compliance with the standards.

Why are caseload standards important?

Defenders across the state frequently don't have enough time to spend on each individual client because their caseloads are too high, or they aren't sure their time will be compensated. The standards are intended to eliminate those problems, and make sure lawyers have enough time to provide quality representation to every client.

Why don't the standards cover family court cases?

The scope of the legislation passed this year specifically focuses on representation in criminal cases only, reflecting the focus of the Hurrell-Harring lawsuit. ILS considers providers of parent representation to

be in need of caseload relief also, but we do not have authority and promised funding to create and implement caseload standards in that area at this time.

Doesn't ILS already have caseload standards?
Previously we've relied on a standard that was based on one developed in the 1970s, but that has been widely criticized since that time. When we started using it in 2013 we wrote that "With further study, we may conclude that these maxima should be set lower" (see page 6 and 7 of this report: https://goo.gl/oJstfl). The Hurrell-Harring settlement required us to conduct that study, and these new standards are the result.

Does this mean providers of representation get more money?
Implementing the standards will require significant new funding to counties to support defenders. This year, ILS' mandate is to plan for their implementation; no money has yet been appropriated to support localities. Once our plan is submitted in December, the legislation clearly says that the standards have to be fully implemented by 2023 with full state funding.

Is this going to mean we have to report more data?
Yes, eventually, but there should also be additional state funding to help support this new data reporting. Right now we are planning for implementation, so the questions we are studying are (a) what information do we need from providers, (b) how much of that information can providers supply, and (c) what will it take to get that information from everyone in the future. We have always requested some caseload information from providers across the state, but the new standards make it more complicated. They break out cases into new categories, and they separate criminal from family court work.

Will we have to submit exactly the same data you're asking for now in future years?
Not necessarily. The purpose of this exercise is to find out what people can provide based on our understanding of our needs. But that understanding might change, and we may also discover there are better ways of doing this – other technological approaches, and other information we could use – that we should explore. This is just our first attempt.

What about cases that don't fall into the categories named in the standards?
We recognize that not all representation actually falls into one of the categories above, with the result that the standards don't prescribe any weight for them. We are also requesting data from you on the types and numbers of those cases in the form we are sending out. That information can help us to understand how to allocate funding even if the cases aren't covered by the standards. It could also help us to develop and modify the standards in the future.

Indigent Legal Services Provider Needs Assessment

Electronic recording of information

20. Does your program use a computer system to record information about your cases? (Check all that apply)

- [ ] Yes - we use the NYSDA Public Defender Case Management System
- [ ] Yes - we use a different case management system. *Please identify which system/software in the text box below.*
- [ ] Yes - we use an electronic vouchering system. *Please identify which system/software in the text box below.*
- [ ] Yes - we use something else (e.g. spreadsheets). *Please identify which system/software in the text box below.*
- [ ] No
- [ ] N/A
- [ ] I don't know

Type here to add any additional details you think we should know.

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Indigent Legal Services Provider Needs Assessment

Electronic recording of information

21. Do you record information about every single case assigned to your program in your computer system?

- ◯ Yes
- ◯ No
- ◯ N/A
- ◯ I don't know

Type here to add any additional details you think we should know.

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Indigent Legal Services Provider Needs Assessment

Electronic recording of information

22. Do you record the following features of each case in your computer system?

	In all cases	In some cases	Not recorded	N/A	I don't know
Case type (e.g. felony, misdemeanor, appeal etc.)	◯	◯	◯	◯	◯
Any motions filed	◯	◯	◯	◯	◯
Any court appearances	◯	◯	◯	◯	◯
Any client communication	◯	◯	◯	◯	◯
Case disposition	◯	◯	◯	◯	◯

Type here to add any additional details you think we should know.

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