

Analysis

‘Hurrell-Harring’ Providers Meet ILS Caseload Standards

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By **Nora Christenson** | June 25, 2019 at 11:30 AM



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all meaningfully reduced attorney workloads and reached compliance with New York State Office of Indigent Legal Services (ILS) Caseload Standards.

Collectively known as the “*Hurrell-Harring* counties,” these five counties have been implementing the historic reforms to public criminal defense set forth in the 2014 Settlement Agreement in *Hurrell-Harring v. The State of New York* (Settlement) which received court approval in March 2015. By ensuring counsel at every arraignment, utilizing uniform criteria and procedures for assessing financial eligibility for assignment of counsel, and taking steps to reduce attorney workloads, the *Hurrell-Harring* counties and providers have worked tirelessly for four years with the aid of \$23.8 million in State funds annually to improve the quality of representation provided in criminal cases. April’s accomplishment is another substantial step toward meeting this goal.

Under Section IV(B) of the Settlement, ILS was required to determine “appropriate numerical caseload/workload standards for each provider of mandated [criminal] representation” in the *Hurrell-Harring* counties. ILS took a two-pronged approach to meet this requirement: *First*, ILS contracted with the RAND Corporation to conduct a three-phase caseload study in the *Hurrell-Harring* counties; and *second*, ILS consulted with the Settlement parties, government officials and providers of mandated representation in the *Hurrell-Harring* counties, and the Office of Court Administration (OCA). On Dec. 8, 2016, ILS submitted a report to the Settlement parties detailing new caseload standards for seven categories of criminal cases and representing a significant reduction from previously relied upon standards, such as the 1973 National Advisory Commission on Criminal Justice Standards and Goals (NAC) caseload standards.

ILS’s Caseload Standards are applicable to both institutional defenders and assigned private counsel and are delineated as both average maximum

number of cases per year and average amount of hours spent per case. To meet the standards in the five *Hurrell-Harring* counties, ILS estimated that it would cost \$19,010,000 annually.

The State included the full \$19,010,000 in funding in the 2017 budget bringing the total Settlement funding to \$23.8 million annually. The Settlement parties agreed to a practical, 17-month timeline—from Dec. 6, 2017 to April 30, 2019—to fully implement the caseload standards, thereby extending the original Settlement deadline from September 2017 to April 2019. Since then, *Hurrell-Harring* providers have transformed their criminal defense practices by adding new staff, bolstering infrastructure, enhancing access to necessary resources, and restructuring internally.

For institutional defenders this has meant:

- A significant increase in staff. Since 2015, the six *Hurrell-Harring* institutional providers have hired a total of **66 new full-time attorney positions** and **36 new non-attorney support staff positions**.
- Better access to and enhanced use of non-attorney professionals to achieve a more holistic, client-centered approach to defense.
- Better access to training opportunities, including high caliber skills-based trainings. Some providers have regular training programs that they make available not only to their own attorneys, but to other public defenders in the region.
- Obvious enhanced litigation and advocacy on behalf of public defense clients, as noticed by District Attorneys and judges.
- Bolstering of supervision and administrative infrastructure for enhanced quality oversight and time to engage in community criminal justice initiatives.

For Assigned Counsel Programs this has meant:

- An increase in Assigned Counsel Program (ACP) staff. Since 2015, the *Hurrell-Harring* ACPs have hired a total of 5 attorneys and 17 support positions. Bolstering the ACP administrative infrastructure not only allows for quick voucher processing, but also provides quality oversight, ensures access to supports and resources, and allows ACP leaders to engage in community criminal justice initiatives.
- The creation of mentor and resource attorney programs so less experienced attorneys have access to one-on-one mentoring and more experienced attorneys have opportunities to consult with other senior attorneys. The *Hurrell-Harring* ACPs have a total of approximately 22 mentors and resource attorneys.
- The implementation of protocols that facilitate access to non-attorney professionals. Attorneys no longer need to apply to courts or face unrealistic caps on payment for these critical resources.
- The implementation of protocols to ensure that panel attorneys have access to training and second chair opportunities.

These improvements have occurred in the context of other Settlement reforms.

All five *Hurrell-Harring* counties have also implemented programs to ensure that every defendant is represented at arraignment.

- ILS estimates that over the past year, **44,350** defendants have been represented at arraignment in the five *Hurrell-Harring* counties and that there have been less than 100 missed arraignments.

- Full arraignment coverage requires multiple plans in each county, including programs to staff court sessions; on-call programs; and agreements with law enforcement to issue appearance tickets for criminal and not civil court sessions.
- ILS has monitored the efficacy of these programs, and where needed has worked with the counties to identify and implement strategies to bolster and improve arraignment coverage.
- Three of the five *Hurrell-Harring* counties have successfully implemented Centralized Arraignment Programs in accordance with Judiciary Law §212(1)(w).

Further, since issuing the *Criteria and Procedures for Determining Assigned Counsel Eligibility* in April 2016, *Hurrell-Harring* counties now have uniform methods and procedures to ensure that every financially eligible defendant is appointed a lawyer, and no one slips through the cracks. Kathleen Dougherty, Executive Director of the Onondaga County Bar Association Assigned Counsel Program, noted “[i]n my opinion, the Eligibility Standards are extremely effective at determining which defendants can pay to retain counsel and which ones can’t. They have resulted in a streamlined process, and defendants are no longer running around in search of unnecessary documents. The Standards have corrected a system that didn’t work well.”

ILS Caseload Standards		
Case Type	Maximum Annual Cases	Minimum Average Hours Per Case
Criminal violent felony	50	37.5
Criminal other felony	100	18.8
Criminal misdemeanor	300	6.3
Violation	300	6.3
Parole revocation	200	9.4
Post-disposition matter	200	9.4
Appeal of a criminal trial verdict	12	156.3
Appeal of a guilty plea	35	53.6

For further information and to access the ILS Caseload Report, published May 8, 2017, visit: www.ils.gov.

Nora Christenson is *Hurrell-Harring Implementation Attorney—Caseload Relief at the New York State Office of Indigent Legal Services*